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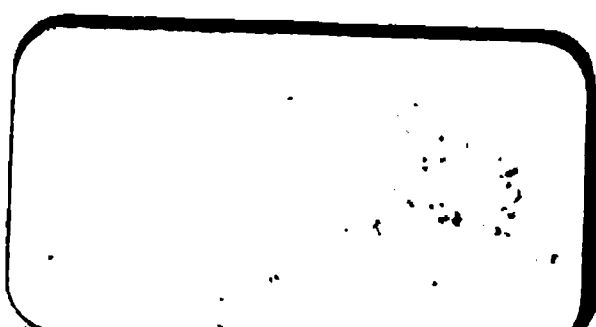
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THE
Law Lexicon,
OR
DICTIONARY OF JURISPRUDENCE :
EXPLAINING ALL
THE TECHNICAL WORDS AND PHRASES
EMPLOYED IN
The several Departments of English Law ;
INCLUDING ALSO THE VARIOUS
LEGAL TERMS USED IN COMMERCIAL TRANSACTIONS ;
TOGETHER WITH
AN EXPLANATORY AS WELL AS LITERAL TRANSLATION
OF THE
LATIN MAXIMS
CONTAINED IN
THE WRITINGS OF THE ANCIENT AND MODERN COMMENTATORS.

By J. J. S. WHARTON, Esq.,

S. C. L., OXON, OF THE MIDDLE TEMPLE, BARRISTER AT LAW, ETC.



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P R E F A C E.

It is not without very considerable diffidence, that this Lexicon is submitted to the indulgence of the Profession and the Public, for no man can be more conscious of the difficulties besetting such a subject,—of the many requisites of the task,—and above all, of the great discrepancy usually exhibited between what a book *ought to be*, and what it *is*,—than the Author of the present undertaking. Knowing, however, from his own experience, the want of a Dictionary especially adapted to ready reference, which should contain the modern law and alterations, as also the terminology comprehended in our varied and intricate jurisprudence, was the inducement to commence, continue, and complete this Work. The aims attempted, throughout its arrangement, have been compression, avoiding obscurity, and yielding information easily and effectually. A word-book, when it obviates tediousness of search by giving a concise answer to one consulting it, possesses a peculiar virtue; for irksome is the process of turning out a word, where, instead of finding its explanation, there is a reference to another part of the book; but should the place referred to again direct the enquirer elsewhere, or, perchance, disclose neither notice nor interpretation, nor, in fact, anything concerning it, then patience becomes exhausted, and perseverance indeed hopeless.

Often has disappointment ensued, when, after reading up a given point of practice or theory, the Author has referred to the Dictionaries extant, in order to learn the precise force of the words and phrases that he had met with in his researches: for frequently they have not even been noticed, or being noticed, their interpretation has involved more confusion, since, for the most part, the very imperfect impression which was entertained before concerning them, often became obliterated by the utterly obscure manner in which the lexicographer had treated them. Some of these works handle a

subject in a mass ; for instance, under the head " Bills of Exchange," an immethodical essay is written, in which are explained, after a fashion, the several characters of acceptor, drawer, indorsee, payee, and the several subjects of acceptance, presentment, notice of dishonor, protest, and so on ; for instead of breaking up the whole subject, and distributing the elements under their appropriate heads, the enquirer searching for acceptor, &c., is referred to Bills of Exchange, where he must wade through the greater part of a long and rambling statement, before he comes to the precise point he wants. A Dictionary is not consulted for an essay or treatise on a particular theme, but to answer a sudden doubt, or explain a present difficulty, as to the proper meaning of a certain technicality. " In considering any complex matter," writes Burke,* " we ought to examine every distinct ingredient in the composition, one by one ; and reduce everything to the utmost simplicity ; since the condition of our nature binds us to a strict law and very narrow limits. We ought afterwards to re-examine the principles by the effect of the composition, as well as the composition by that of the principles. We ought to compare our subject with things of a similar nature, and even with things of a contrary nature ; for discoveries may be, and often are, made by the contrast, which would escape us on the single view. The greater number of the comparisons we make, the more general and the more certain our knowledge is like to prove, as built upon a more extensive and perfect induction."

The constituents of the great subjects have been distributed under their proper letters, with a view to prevent as much reference to other parts of the book as possible ; and when a phrase or technicality belongs in common to several departments of our laws, an analysis has been made, in order to keep separate the details of the particulars and distinctions. Occasional passages from the Jewish, Greek, and Roman antiquities have been quoted, either to illustrate a doctrine or to indicate an analogy ; but of this, sparing use has been made, as their too frequent insertion would have increased bulk, without perhaps augmenting value. The authorities relied upon are referred to for examination, in order that the subject may be more fully studied by those, who desire to acquire a fuller knowledge of historical jurisprudence or the

* Preface to the Enquiry into the Origin of our Ideas of the Sublime and Beautiful.

PREFACE.

polity of the ancients. Method has been attended to, as the main design of a Dictionary is immediate use.

Thus useful arms in magazines we place,
All rang'd in order, and disposed with grace :
. Nor thus alone the curious eye to please,
But to be found, when need requires, with ease.*

Whether the Work is successful or not, in attaining its avowed purpose, cannot here be determined; its real value,—its suitableness as a Lexicon,—will be tested by experience, which neither a persuasive perface nor an unfavourable review can influence. The Author craves pardon for any trivial error or misprint, as the greater part of the book was written, and the proofs corrected, during his academical studies; and he will be grateful for any suggestions, which, supplying the defects and elucidating the obscurities of this edition, would increase the utility of a second, should a second be called for.

J. J. S. WHARTON.

London, October 1847.

* Pope's Essay on Criticism.

A LIST

OR

THE PRINCIPAL AUTHORITIES RELIED UPON IN THE COMPOSITION OF THIS LEXICON.

N. B.—This is not a full List; the Reports and many Works quoted occasionally are omitted.

- | | |
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| Adams's Treatise on the Principles and Practice of the Action of Ejectment, and the resulting Action of Mesne Profits. | Bracton de Legibus et Consuetudinibus Angliæ. |
| Aldrich's Artis Logicæ Compendium. | Brady's Clavis Calendaria. |
| Allen's Enquiry of the Royal Prerogative of England. | Brady's History of England. |
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| Ancient Laws and Institutes of England. | Brook's Abridgment. |
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| Bird's Law respecting Masters, Servants, Journeymen, and Apprentices. | Chitty's Archbold's Common Law Practice. |
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Wordsworth's Law of Elections.
Wordsworth's Law of Joint-stock Companies.
Wright's Tenures.

Law Lexicon,

OR

DICTIONARY OF JURISPRUDENCE.

AB

AB (from *Abba*, Syriac, Father). The eleventh month of the Jewish civil year, and the fifth of the sacred. It answers to the moon that begins in July, and consists of thirty days. On the 24th is observed a feast in memory of the abolishment of the Sadducean law, which required sons and daughters to be equal heirs of their parents' estate. *Brown's Dict. of Bible*, *Jahn's Bib. Antiq.*

AB, at the beginning of English Saxon names of places, is generally a contraction of *Abbot* or *Abbey*; whence it is inferred, that those places once had an abbey there, or belonged to one elsewhere, as Abingdon in Berkshire, Abbotsbury in Dorsetshire, &c. *Blount's Law Glossary*.

ABACINARE, a punishment, described by historians of the middle ages, which blinded a criminal by holding red-hot irons before his eyes. *Encyc. Lond.*

ABACIST, or **ABACISTA**, one who casts accounts, an arithmetician. *Blount, Cowell's Interpreter*.

ABACOT, the royal cap of state formerly worn by the Kings of England, wrought in the shape of two crowns. *Chron. Angl.* 1463.

ABACTOR (ab *abigendo*, Lat.), a stealer and driver away of cattle or beasts by herds or in great numbers at once, in distinction from him who steals only a single sheep. *Encyc. Lond.*

ABACUS (αβαξ, Gk., a buffet) arithmetic, from the *Abacus*, an ancient instrument for facilitating operations by means of counters. Its form is various, but that chiefly used in Europe is made by drawing parallel lines distant from each other at least twice the diameter of a counter, which, placed on the lowest line, signifies 1; on the second, 10; on the third, 100; on the fourth, 1000, and so on. In the intermediate spaces, the same counters are estimated at one half of the value of the line immediately superior. There were also other inventions similarly denominated; viz. *Abacus Pythagoricus*, a multiplication table invented by Pythagoras; *Abacus Logisticus*, a rectangled triangle, whose sides forming the right angle, contain all the numbers from 1 to 60, and its area the products of each two of the opposite numbers; it is also called a canon of *sexigesimals*; and the *Abacus*,

ABA

cus, or table strewed with dust, upon which the ancient mathematicians drew their schemes. *Dyche's Dict.*, *Encyc. Lond.*

ABALLABA, the antient name of Appleby in Westmoreland.

ABALIENATE, to make over to another, a term of the Civil Law. *Encyc. Lond.*

ABALIENATION, a making over of an estate, goods, or chattels, to another, by due course of law. *Ib.*

ABANDONMENT, the exercise of a right, which the assured has to call upon the underwriters or assurers to accept of what is saved and to pay the full amount of the assurance, as if a total loss had happened, where the matter assured is by some of the usual perils of the seas, become of little value. *Sel. Nisi Prius*, 866. The damage to a cargo must exceed half its value, to entitle the assured to abandon, and recover as for a total loss, and to justify the abandonment of a ship, the particular injuries must be such, that any repairs could not have rendered her seaworthy for the remainder of the voyage. The assured must give notice of his intention to abandon and claim as for a total loss to the underwriters, or their agents, within a reasonable time after he has received intelligence of the casualty, otherwise it will be taken that he intends to claim for a partial loss only. Abandonment very frequently takes place in cases of capture: the loss is then total, and no question can arise in respect to it. In cases, however, in which a ship and cargo are re-captured *within such a time that the object of the voyage is not lost*, the insured is not entitled to abandon. The mere *stranding* of a ship is not deemed of itself such a loss as will justify an abandonment. If by some fortunate accident, by the exertions of the crew, or by any borrowed assistance, the ship be got off and rendered capable of continuing her voyage, it is not a total loss, and the insured are only liable for the expences occasioned by the stranding. It is only where the stranding is followed by *shipwreck*, or in any other way renders the ship incapable of prosecuting her voyage, that the insured can abandon. Consult *Marshall or Park on Insurance*.

ABANDUN, any thing sequestered, pros-

cribed, or abandoned. *Abandon*, i. e., in *bannum res missa*, a thing banned or denounced as forfeited or lost, from whence to *abandon*, *desert*, or *forsake*, as lost and gone. *Cowel*. *Pasquier* thinks it a coalition of *à ban donner*, to give up to a proscription, in which sense we used to mention the ban of the empire. *Ban*, in our own old dialect, signifies a curse; and to *abandon*, if considered as compounded between French and Saxon, is exactly equivalent to *diris devovere*.

ABANNITION, a banishment of one or two years for manslaughter. *Obsolete*.

ABARNARE (*Abarian*, Ang. Sax.), *denudare*, *detegere*, to lay bare, discover, detect. Hence *æbere theof*, a detected or convicted thief; *æbere morth*, a detected homicide. Also to detect and discover to a magistrate any secret crime. *Antient Laws and Institutes of England*, Leg. Canuti, c. 104.

ABARSTICK (from *a priv* and *Berstan*, Sax., *disrumpi*), insatiable. *Cowel*.

Ab assuetis non fit injuria. Jenk. 8. Cent. Reports.—(From things to which we are accustomed, no injury arises).

If a person neglect to insist on his right he is deemed to have abandoned it. "A Court of Equity," said Lord Camden, "which is never active in relief against conscience or public convenience, has always refused its aid to stale demands, where a party has slept upon his right, and acquiesced for a great length of time. Nothing can call forth this Court into activity but conscience, good faith, and reasonable diligence: where these are wanting the Court is passive and does nothing. Laches and neglect are always discouraged; and, therefore, from the beginning of this jurisdiction, there was always a limitation to suits in this Court." *Smith v. Clay*, *Ambl.* 645; 3 *Bro. C. C.* 639.

ABATAMENTUM, an entry by interposition. 1 *Inst.* 277.

ABATE (*abbatre*), to prostrate, break down, remove, or destroy; also, to let down the price in buying or selling. *Encyc. Lond.*

ABATEMENT is used in six senses, as follows:—

- (1) **Abatement of Freehold**. Where a person dies seized of an inheritance, and before the heir or devisee enters, a stranger, having no right, makes entry and gets possession of it. Such an entry is technically called an abatement, and the stranger, an abator. It is, in fact, a figurative expression, denoting that the rightful possession or freehold of the heir or devisee is overthrown by the rude intervention of a stranger. *Abatement* differs from *intrusion*, in that it is always to the prejudice of the heir or immediate devisee, whereas the latter is to the prejudice of the reversioner or remainder-man: and a *disseisor* differs from the both, for he *disseises*, i. e., puts a person seized of the freehold out of possession, such act being called a *disseisin*. *Finch L.* 195; 3 *Bl. Com.* 167.

- (2) **Abatement or removal of Nuisances**. A remedy allowed by law to the party injured by a nuisance to abate, destroy, remove, or put an end to the same by his own act. Whatever unlawfully annoys or damages another is a nuisance, which may be abated, i. e., taken away or removed by the aggrieved party, so that he commit no riot in the doing of it. This seems to be the primitive sense of the term abatement. The reason why the law allows this summary method of doing one's self justice, is because injuries of this kind require an immediate remedy and cannot wait for the slow progress of the ordinary forms of justice. It is also used in a privative sense, in *Statute, Westm.* 1, 3 *Edw.* 1, c. 17, where mention is made of abating a castle or fortress, clearly signifying to pull it down and level it even with the ground. 3 *Bl. Com.*

- (3) **Plea of Abatement**. Delivered by the defendant, in which he shows cause to the Court why he should not be impleaded or sued, or, if impleaded, not in the manner and form in which he then is, and praying that the action may abate, i. e., cease. *For the learning on this subject consult Chitty on Pleading, vol. 1, and Stephen's Principles of Pleading in Civil Actions.*

- (4) **Abatement of Legacies and Debts**. If specific and pecuniary legacies are bequeathed, and the estate fall short to satisfy the pecuniary legacies in full, they shall abate in proportion. 2 *Fonbl.* 369. Also in case of a deficiency of assets to pay the debts, the pecuniary legacies must abate in proportion, nor will Equity prefer one legatee to another, but will apply the general rule of equality, unless there be strong and insuperable words in the will or codicil to the contrary. 2 *Ves.* 421. Specific legacies abate lastly. If the equitable assets fall short, all the creditors are required to abate in proportion. *Story's Equity Juris.*, vol. 2, p. 449.

- (5) **Abatement by death, &c.** The death of parties to actions at law and suits in equity before they are completed causes their abatement. At law, they must be revived by *scire facias*, in equity by bill of revivor. Marriage, change of interest, &c., operate similar effects. See 2 *Chit. Arch. Prac.*, and *Story's Comm. on Equity Pleading*.

- (6) **Abatement or rebate in commerce**, an allowance or discount made for prompt payment. *Lex Mercatoria*. It is also sometimes used to express the deduction that is occasionally made at the Custom House from the duties chargeable upon such goods as are damaged, and for a loss in warehouses, regulated by 3 & 4 *Wm.* IV., c. 52, s. 32.

ABATOR, he that abates, i. e., enters into a house or land vacant by the death of the former possessor and not yet taken possession of by his heir. *Cowel*. Also an agent or cause by which an abatement is procured.

ABATUDA, or ABATUDE. Any thing diminished. *Moneta abatuda* is money clipped or diminished in value. *Du Fresne's Glossary.* Used in old records.

ABAWED (*Echalier*, Fr., *attonitum reddere*, Lat.), terrified. *Blount.*

ABAVUS, a grandfather's grandfather.

ABBACY (*Abbatia*, or *Abbathia*, Lat.) The government of a religious house and the revenues thereof, subject to an abbot, as a bishopric is to a bishop. *Cowel.* The rights and privileges of an abbot.

ABBANDUNUM, ABBENDOMA, ABBENDONIA, Abingdon in Berkshire, which took its present name soon after Cissa, King of the West Saxons, had founded the abbey there. It was also called Sewsham and Cloveshoe.

ABBAS (*astuarium*), Humber in Yorkshire.

ABBAT, or ABBOT (*abbas*, Lat., *abbé*, Fr., *abbud*, Sax.; others derive it from *Abba*, Syriac, father). A spiritual lord or governor, who had the rule of a religious house. An abbot, with the monks of the same house, were called the *convent*, and made a corporation. *Terms de Ley*, 4. Henry VIII., as is well known, dissolved the monasteries, &c.

ABBATIS, an avener or steward of the stables, an ostler. *Spelm.*

ABBEY, or ABBY (*abbatia*), a place or house for religious retirement, governed by an abbas where nuns are, and by an abbot where monks are. Formerly in England, and now on the continent, great privileges were and are granted to them, such as being exempted from the bishop's visitation, and as a sanctuary for persons escaping from the penalties of an infringed law, even although they be murderers. 190 abbeys were dissolved by Henry VIII., whose yearly revenue amounted to 2,853,000*l.* per annum (an almost incredible sum considering the value of money in those days), a great part of which went to Rome, the governors and governesses of several of the richest among them being foreigners resident in Italy. It was because certain abbots and priors in England, in right of the monasteries, held lands of the crown, for which they owed military service, that they obtained the title of *Lords*, and were summoned as barons to parliament, from which custom the Bishops of the present day have the same honour, and are denominated Spiritual Peers. *Hallam's Middle Ages. Monasticon Anglicanum.*

ABBREVIATE OF ADJUDICATION. A term applied to an abstract of adjudication. *Scotch Law.* Adjudication is that diligence of the law by which the heritage of a debtor is adjudged to belong to his creditor in payment of debt; and the abbreviate of the adjudication is an abridgement of the record, containing the names of the creditor, debtor and lands, with the amount of the debt; it is signed by the Judge who pronounced the decree in the process of adjudication, and must be recorded in the register of abbreviates. *Scotch Dict.*

ABBREVIATION. The 4 Geo. II., c. 26,

provided, that all law proceedings should be in the English language, written legibly, and in words at length, and not abbreviated; but the 6 Geo. II., c. 14, permitted numbers to be expressed in figures, and such abbreviations as are commonly used. In 9 Co. 48, is this maxim, *Abbreviationum, ille numerus et sensus accipiendus est, ut concessio non sit inanis.* (In abbreviations, that number and sense is to be taken, by which the meaning is not rendered void.)

ABBREVIATORS, officers who assist in drawing up the Pope's briefs, and reducing petitions into proper form, to be converted into Papal Bulls.

ABBROCH, to monopolise goods or forestall a market.

ABBROCHMENT, or ABROACHMENT, (*ab*, Lat., and *broche*, Fr., a spit). The forestalling of a market or fair. *MS. Antiq.* Forestalling is abolished by 7 & 8 Vict. c. 24, by which are repealed many statutes in restraint of trade. This act extends to Scotland and Ireland.

ABBUTTALS, or ABUTTALS, (*abutter* or *abouter*, Fr., to limit or bound). The buttings and boundings of lands, east, west, north, and south, with respect to the places by which they are limited and bounded. The *sides* of the land are properly said to be *adjoining*, and the *ends abutting* to the thing contiguous. *Termes de la Ley*, 9. The 2 & 3 Wm. IV., c. 64, settled the divisions of counties and the limits of cities and boroughs within England and Wales. The enclosure acts of 41 Geo. III., c. 109, s. 3, and 6 & 7 Wm. IV., c. 115, s. 28, empowered the commissioners to settle the boundaries of parishes and manors, hamlets and districts between lands to be enclosed, and adjoining lands.

ABDICANT, giving up, renouncing.

ABDICATION, to renounce or refuse anything. *Termes de la Ley*, 5.

ABDICATION. Where a magistrate or person in office renounces or gives it up before the time of service is expired. It differs from resignation, in that *abdication* is done purely and simply, whereas *resignation* is in favour of some other person. It is said to be a renunciation, quitting, and relinquishing, so as to have nothing further to do with a thing, or the doing of such actions as are inconsistent with the holding of it. *Chamb. Dict.* On King James II.'s leaving this kingdom, and *abdication* the crown, the Lords would have had the word "*desertion*" made use of, but the Commons thought it was not comprehensive enough, for that the King might then have liberty of returning. The Scots called it a forfeiture (*forfeiture*) of the crown, from the verb *forisfacio*. This was fully canvassed in the then *Parliamentary Debates*. Involuntary resignations are also termed abdications, as Napoleon's abdication at Fontainebleau.

ABDITORIUM. An abditory or hiding place to hide and preserve goods, plate, or money, or a chest in which reliques were kept, as

mentioned in the inventory of the church of York. *Dugdale's Monasticon Anglicanum*, p. 173.

ABDUCTION. The forcible and fraudulent abduction of women or girls on account of their fortune. This offence is punished in England, under 9 Geo. IV., c. 31, and in Ireland under 10 Geo. IV., c. 34, by transportation for life, or not less than seven years, or imprisonment with or without hard labour, not exceeding four years. The taking of any unmarried girl under sixteen out of the possession of a parent or guardian, is declared a misdemeanor, punishable by fine and imprisonment. See the remarkable case of the *King v. Edward Gibbon Wakefield*, published by *Murray*, which occasioned the passing of the two above named acts of parliament.

In logic, a particular form of argument, by the Greeks called *apagoge*, wherein the greater extreme is evidently contained in the medium, but the medium not so evidently in the less extreme as not to require some further medium or proof to make it appear. *Encyc. Lond.*

ABEARANCE, signifying carriage or behaviour. A recognizance to be of good *abearance* means to be of good behaviour. 4 Bl. 251, 256.

ABECHED (*abecher*, Fr.), to be satisfied. *Cowel*.

ABEREMURDER (*abere*, apparent, notorious, and *mord*, murder, Sax.). Plain or downright murder as distinguished from the less heinous crime of manslaughter or chance medley. It was declared a capital offence, without fine or commutation, by the laws of Canute, c. 93, and of Hen. I, c. 13. *Spelm.*

ABERFRAW (*aber-fraw*, Welch, efflux of the Fraw). The princely seat of Venedotia (North Wales) was situated where the brook Fraw flows into the sea. Here was erected the Supreme Court of Law for the administration of justice in that part of the Principality. *Antient Laws and Institutes of Wales*.

ABESSED (*abaisser*, Fr.) humbled, depressed, abased. *Blount*.

ABET (*abettare*, from *a* (*ad vel usque*), and *bedan* or *beteren*, to stir up or excite, Saxon; or *boutli*, Fr., *impellere, excitare*,) to encourage or set on, the substantive *abetment* signifying the same. An *abettor* is an instigator or setter on, one who promotes or procures a crime to be committed. *Old Nat. Br.* 21. Treason is the only crime in which abettors are excluded by law, every one concerned being a principal.

ABEYANCE, or **ABBAYANCE** (*beer* or *bayer*, to expect, Fr.) It is what is in expectation, remembrance, and contemplation of law. *Cowel*. The word *abeyance* has been compared to what the civilians call *hereditatem jacentem*; for as the civilians say, lands and goods *jaçant*, so the common lawyers say that things in a similar condition are in abeyance, as the logicians term it *in posse*, or in understanding. Abeyance in

gremio legis, or *in nubibus*, means in consideration of law. *Plowd. Rep.* 547. The strict interpretation of this word as to freehold interests has puzzled eminent lawyers, but as Mr. Justice Coleridge once observed, it is more a matter of curiosity than practical importance.

ABGATORIA, the alphabet. *Matt. Westm.* The Irish call the alphabet *abghitten*.

ABIB (signifying green ears of corn or fresh fruits, sometimes called *Nisan*, a Babylonish name,) the first sacred, and seventh civil month of the Jewish year. It contained thirty days, and answers to part of our March and April. *Brown's Dict. of Bible, Jahn's Bib. Antiq.*

ABIDING-BY. Where a deed is challenged as forged, the party founding on the deed must appear in Court and abide by it. This is done by his signing a declaration that he abides by the deed quarrelled or challenged, *sub periculo falsi*, which has the effect of pledging him to stand to the consequences of founding on a forged deed. The abiding-by is usually qualified thus, in the case of a bill of exchange, the holder will state that it came fairly into his hands in the course of business, and he will abide by it under that protestation and qualification, and as in no shape accessory to the alleged forgery. *Scotch Law*.

ABIGEAT, the crime of stealing cattle by droves or herds. It was severely punished, the delinquent being often condemned to the mines, banishment, or something capital. Also a miscarriage procured by art. *Ash*.

ABIGEVUS (*abigens*), a stealer of cattle, the same as abactor. *Cowel*.

ABINTESTATE, inheriting from a person who died without having made a will.

ABISHERING, or **ABISHERSING**, quit of amercements. It originally signified a forfeiture or amercement, and is more properly *mishering*, *mishersing*, or *miskering*, according to *Spelman*. It has since been termed a liberty or freedom, because, wherever this word is used in a grant or charter, the persons to whom made have the forfeitures and amercements of all others, and are themselves free from the control of any within their fee. *Rastal's Abr.*

ABJUDICATE, to give away in judgments. *Obsolete*.

ABJURATION, a forswearing or renouncing by oath. In the old law it signified a sworn banishment, or an oath taken to forsake the realm for ever by a person claiming sanctuary, abolished by 21 Jac. I., c. 28, and now it extends to persons and doctrines as well as to places, *ex. gra.*, the oath which is taken by every person entering upon any public office or trust, whereby he abjures the Pretender, and recognizes the right of her Majesty under the act of settlement, engaging to support her, and promising to disclose all treasons and traitorous conspiracies against her. *Stamford's Pl. C., b. 2, c. 40*.

ABJURE, to retract, recant, or abnegate a position upon oath.

ABLADIUM, corn cut down. *Old Records.*

ABLATO-BULGIO, Bulness, or Bolness, in Cumberland.

ABLEGATE, to send abroad a person on some public business or embassy.

ABLOCATION, a letting out to hire.

ABO, a carcase of an animal killed by a wolf or other beast of prey. *Antient Laws and Inst. of Wales.*

ABOLITION, a destroying, effacing, or putting out of memory; also, the leave given by the King or Judges to a criminal accuser to desist from further prosecution. 25 H. VIII., c. 21.

ABONE (*Abonis*), Avington or Avention, in Gloucestershire.

ABORIGENES (*ab*, from, and *errare*, Lat., to wander), a name given to the original or first inhabitants of any country, but more particularly used for the antient inhabitants of *Latium*, who lived there when *Æneas* and the Trojans arrived in Italy. *Clas. Dict., Dion Halicar, Livy, Aurelius Victor.*

ABORTION from *ab*, which in composition signifies defect, according to *Martinius*, and *orior*, Lat., to arise), a miscarriage, or the exclusion of the *fœtus* before its due time. By 9 Geo. IV., c. 31, s. 13, it is enacted, that if any person, with intent to procure the miscarriage of any woman, then being *quick* with child, shall cause her to take poison, or use any other means with the like intent, every such offender, and all who counsel and abet him, shall be guilty of felony, and being convicted thereof, shall suffer death. And if the woman were *not quick* with child, then such offender, his counsellors or abettors, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be transported for any term not exceeding fourteen years, nor less than seven years, or be imprisoned, with or without hard labour, for any term not exceeding three years, and if a male, to be once, twice, or thrice publicly or privately whipped, if the Court shall so think fit, in addition to such imprisonment.

The motion of the *fœtus* when felt by the mother, is called *quickening*. Now it is important to understand the sense attached to this term formerly, and at the present day. The antient opinion, and on which indeed the laws of some countries have been founded, was, that the *fœtus* became animated at this period; that it acquired a new mode of existence. This is altogether abandoned. The *fœtus* is certainly, if we speak physiologically, as much a living being immediately after conception, as at any other time before delivery, and its future progress is but the developement and increase of those constituent principles which it then received. The next theory attached to the term, and which is yet to be found in many of our standard works, is, that from the increase of the *fœtus*, its motions, which had hitherto been feeble and imperfect, now are of sufficient strength to communicate a sensible impulse to the adjacent parts of the mother. In this sense,

then, quickening implies the first sensation which the mother has of the motion of the child which she has conceived.

A far more rational and undoubtedly correct opinion, is that which considers quickening to be produced by the *impregnated uterus starting suddenly out of the pelvis into the abdominal cavity*. This explains several peculiarities attendant on the phenomenon in question; the variety in the period of its occurrence, (the extremes being from the tenth to the twenty-fifth week, taking place generally at the completion of four calendar months after conception,) the faintness which usually accompanies it, owing to the pressure being removed from the iliac vessels, and the blood suddenly rushing to them, and the distinctness of its character, differing, as all mothers assert, from any subsequent motions of the *fœtus*. Its occasional absence in some females is also readily accounted for, the ascent from the pelvic cavity into the abdomen being gradual and unobserved.

The absurd error of denying to the *fœtus* any vitality until after the time of quickening, has received the sanction of the laws of this country, and accordingly, the punishment denounced against abortion procured after quickening is much severer than before. Again, our laws allow a reprieve, *ex necessitate legis*, where a woman is capitally convicted and pleads pregnancy; though this is no cause to stay judgment, yet it is to respite her execution till she be delivered. "In case this plea," observes Blackstone, in the 31st chapter of the 4th volume of his Commentaries, "be made in stay of execution, the Judge must direct a jury of twelve matrons or discreet women to inquire the facts; and if they bring in their verdict *quick with child*, (for barely *with child*, unless it be *alive in the womb*, is not sufficient,) execution should be stayed generally until the next session, and so from session to session, till either she is delivered or proves by the course of nature not to have been with child at all. But if she once hath had the benefit of this reprieve, and been delivered, and afterwards becomes pregnant again, she shall not be entitled to the benefit of another respite for that cause. For she may now be executed before the child is quick in the womb, and shall not, by her own incontinence, evade the sentence of justice."

The absurdity of the principle upon which these distinctions are founded is of easy demonstration. Now the *fœtus* before quickening must be either dead or alive. That it is not dead is most evident from neither putrefaction nor decomposition taking place, which would be the inevitable consequences of the extinction of the vital principle. To say that the connection with the mother prevents this is wholly untenable; facts are opposed to it. *Fœtuses* do actually die in the uterus before quickening, and then all the signs of death are present. The embryo, therefore, before that crisis, must be in a state different from that of death, and this

can be no other than life. But granting, for the sake of argument, that the foetus does not stir previously to quickening, what does the whole objection amount to? Why only that one evidence of vitality, viz., motion, is wanting, and it needs hardly a remark, that this sign is not essential to the evidence of life. The incompleteness of the embryo previous to quickening is no objection to its vitality, for life does not depend upon a complication of organs; on the contrary, it is found that some of the simplest animals, as the polypi, are the most tenacious of life, and besides, upon this principle, vitality must be denied to the child after birth, because many bones and parts of the body are even then imperfect. Neither is the want of organic action any argument against this doctrine. Life appears to depend essentially as little upon organic action as it does upon a complication of organs. If it did, the foetus after quickening would be just as destitute of life as before, for its brain, lungs, stomach, and intestinal canal, perform no more action at the eighth month than they do at the third.

The observations of physiologists tend to prove the vitality previous to quickening, and the fact is certain, that *the foetus enjoys life long before the sensation of quickening is felt by the mother*. Indeed, no other doctrine appears to be consonant with reason or physiology, but that which admits the embryo to possess vitality from the very moment of conception. If then physiology and reason justify the position laid down in the preceding remarks, (and that they do has been shewn,) the laws which treat with less severity the time of procuring abortion at an early period of gestation, thus tempting to the perpetration of a crime at one time, which, at a subsequent period, is punished by death: besides, the laws, hanging a woman who is pregnant, *but not quick* with child, depriving a child, therefore, in the fifteenth week of its foetal existence for the mother's crime, while a child in the sixteenth week is protected from such an unmerited fate, are immoral, irrational, and unjust, and ought to be amended without further delay; for in the language of the admirable *Percival*, (vol. 2, p. 430,) "to extinguish the first spark of life is a crime of the same nature both against our Maker and society, as to destroy an infant, a child, or a man; these regular and successive stages of existence being the ordinances of God, subject alone to his divine will, and appointed by sovereign wisdom and goodness, as the exclusive means of preserving the race and multiplying the enjoyments of mankind." Consult *Beck's Medical Jurisprudence*, 122, 136, 343, 357, where all the chief medical authorities upon midwifery are collected and quoted.

ABOVE-CITED, quoted before. A figurative expression taken from the ancient manner of writing books on scrolls, where, whatever is cited or mentioned before in the same roll must be *above*. *Encyc. Lond.*

ABRENUNCIATION, absolute denial. *Little used*.

ABREVICUM, Berwick-upon-Tweed.

ABRIDGE (*abbreger*, Fr.), to make shorter in words and still retain the sense and substance. In law, it signifies the making a declaration or count shorter by subtracting or severing some of the substance therefrom, *ex. gra.*, a man is said to abridge his plaint in excise, and a woman her demand in action of dower, where any land is put into the plaint or demand which is not in the tenure of the defendant; for if the defendant plead non-tenure, joint-tenancy, or the like, in abatement of the writ as to part of the lands, the plaintiff may leave out those lands, and pray that the tenant may answer to the rest. *Brook.*, tit. *Abridgement*.

ABRIDGEMENT (*Abbreviamentum*). A large work contracted into a narrow compass. *Jacob*.

ABROGATION, to disannul or take away anything; to abrogate a law is to lay aside or repeal it. *Cowel*. The maxim is *Leges posteriores priores contrarias abrogant*. 11 Co. 626. (Subsequent laws abrogate prior laws contrary to them).

Abrogation stands opposed to *rogation*; it is distinguished from *derogation*, which implies the taking away only some part of a law; from *subrogation*, which denotes the adding a clause to it; from *obrogation*, which implies the limiting or restraining it; from *dispensation*, which only sets it aside in a particular instance, and from *antiquation*, which is the refusing to pass a law. *Encyc. Lond.*

ABSCOND, to go out of the jurisdiction of the Courts, or to lie concealed in order to avoid any of their processes.

ABSENCE, want of appearance. A decree is said to be in absence where the defender does not appear; every Scotchman within the kingdom is liable to be called in an action before the Court of Session, in which action decree may be given against the defender, although he does not appear. Even a foreigner, though not within the kingdom, provided he possess a land estate in it, or goods, which have been attached for the purpose of founding jurisdiction, may be exposed to a decree in absence. *Scotch Law*. Absence, generally, is of a fivefold kind or species:—1. *a necessary absence*, as in banished or transported persons; this is entirely necessary. 2. *Necessary and voluntary*, as upon the account of the commonwealth, or in the service of the church. 3. *A probable absence*, according to the civilians, as that of students on the score of study. 4. *Entirely voluntary*, on account of trade, merchandize, and the like. 5. *Absence cum dolo et culpa*, as not appearing to a writ, *subpoena*, citation, &c., or to delay or defeat creditors, or avoiding arrest either on civil or criminal process. *Ayliffe*.

ABSENTEES, or *des absentes*. A parliament so called was held at Dublin, 10th May, 8 Hen. VIII., and mentioned in letters patent dated 29 Hen. VIII.

ABSOLVE, to acquit of a crime, to pardon or set free from excommunication. See "*Assoile*."

Absoluta sententia expositore non indiget, 2 Inst. 533. (An absolute sentence requires no expositor).

ABSOLUTE, complete, unconditional, not relative, as a rule-*absolute*, which can be forthwith enforced in contradistinction to a rule *nisi*, which is incomplete until cause shewn or opposite party makes default in appearing.

ABSOLUTE WARRANTICE, a warrant against all mortals. *Scotch Law*.

ABSOLUTION, a dispensation from Rome, declaring a remission of sins; an acquittal by sentence of law. *Ayliffe*.

ABSONIARE, to shun or avoid, used by the English Saxons in the oath of fealty. *Somner*.

ABSQUE HOC (without this). The technical words of exception made use of in a traverse; as the defendant pleads that such a thing was done at B., &c., *without this* (*absque hoc*), that it was done at, &c. 1 Saund. 22.

ABSQUE IMPETITIONE VASTI. (Without impeachment of waste.) A reservation frequently made to a tenant for life, that no man shall *impetere* or sue him for waste committed. This reservation only excuses from *permissive* waste, but is never extended to allow malicious waste to the destruction of the estate. 2 Ch. C. 32.

ABSTRACT OF TITLE, an epitome of the evidences of ownership. *Martin's Conv. Introd.*

Absurdum est affirmare re credendum esse non judici, 12 Co. 25. (It is absurd to affirm that the subject-matter is to be relied upon, not the Judge.)

Abundans cautela non nocet, 11 Co. 6. (Abundant caution hurts not.)

ABUT (*aboutir*, Fr., to touch at the end), to border upon or approach to. *Encyc. Lond.*

ACCAPITARE, or **ACCAPITUM**, to pay relief to lords of manors. *Capitali domino accapitare*, i. e., to pay a relief, homage, or obedience to the chief lord on becoming his vassal. *Fleta*, l. 2, c. 50.

ACCAPITUM, money paid by a vassal upon his admission to a feud; the relief due to the chief Lord. *Encyc. Lond.*

ACCEDAS AD CURIAM. (That you go to the Court.) An original writ to the sheriff, issued out of Chancery, where a man has received false judgment in a Hundred Court or Court Baron, or justice has been delayed. If a plaint in replevin be levied it is removed by this writ, which is in every respect the same as the *recordari facias loquelam*, excepting that it directs the sheriff to go to the Lord's Court, and there cause the plaint to be recorded, and so to return it to the Court above, being one of the Superior Courts of Common Law at Westminster. *F. N. B.* 71 D.

ACCEDAS AD VICECOMITEM. (That you go to the sheriff.) Where the sheriff has a writ called *pone* delivered to him, but sup-

presses it, this writ is sent to the coroner, commanding him to deliver a writ to the sheriff. *Reg. Orig.* 83.

ACCEPTANCE, the taking and accepting of anything in good part, and as it were a tacit agreement to a preceding act, which might have been defeated or avoided if such acceptance had not been made. *Blount*.

Acceptance, in commercial language, is an engagement to pay a bill of exchange according to the tenor of the acceptance, which may be either absolute or conditional. In the case of English and Irish bills of exchange, the acceptance must be in writing on the bill, but Scotch and foreign bills of exchange may be accepted verbally, or by letter or other collateral memorandum, 1 & 2 Geo. IV., c. 78. An absolute acceptance is either general or qualified, and is usually written across the face of the bill of exchange thus, "Accepted, payable at Messrs. —, Bankers, London;" if it is to be qualified, the words "and not otherwise or elsewhere" are added, and then follows the signature of the person accepting. If the acceptance be qualified, non-presentation of the bill of exchange at the specified place, and in the proper time, would exonerate the person who accepted it, and all the other parties, but the person who accepted it would not so be exonerated if the acceptance were general. It may be conditional, as "It will not be accepted until the ship with the wheat arrives," or, "cannot accept till stores are paid for," these are undertakings to accept when the ship with the wheat arrives, or the stores are paid for. *Acceptance supra* (under) *protest for honour* is sometimes resorted to in the case of foreign bills of exchange, where the person upon whom the bill is drawn cannot be found or refuses to accept, some friend after the bill has been protested for non-acceptance accepts thus, "Accepted, *supra* protest, for the honour of Messrs. —. A. B." The bill must still be presented to the person on whom it was originally drawn, and after refusal and protest for non-payment, resort must be had to the person accepting for honour. 6 & 7 Wm. IV., c. 58. *Consult Story, Chitty, or Bayley on Bills of Exchange*.

ACCEPTILATION, the extinction of a debt, with a declaration that the debt has been paid when it has not, or the acceptance of something merely imaginary in satisfaction of the debt. *Scotch Law, Smith's Dict. of Antiq.*

ACCEPTOR, a person upon whom a bill of exchange is drawn, he is called *drawee* before acceptance, and acceptor after; he is the first and principal party liable to pay the amount of the bill, for hardly anything but payment or a release will discharge him. 2 Starkie, 228; 1 Camp. 35.

ACCESSARY, or **ACCESSORY** (*particeps criminis quasi accedens ad culpam*, Lat., as though assenting to the offence). He who is not a chief actor in a felony, nor present

at its perpetration, but is some way concerned therein, either before or after the fact committed. An accessory *before* the fact is one, who being absent at the time of the commission of the felony, yet procures, counsels, or commands another to commit a crime. Absence is necessary to make him an accessory, for if he be present, he becomes a principal. An accessory *after* the fact may be, where a person knowing a felony to have been committed, receives, relieves, comforts or assists the felon. To make an accessory *ex post facto*, it is in the first place requisite that he knows of the felony committed; in the next place, he must receive, relieve, comfort, or assist the felon, and generally, any assistance whatever given to hinder the apprehension, trial, or punishment of the felon, makes the assistor an accessory. In high treason, and misdemeanours, there are no accessories, either before or after the offence, every person implicated being principals. Consult *Archbold's Criminal Pleading*; *Blackstone's Commentaries*, 4th vol.; *Hale's Hist. Pl. C.*, or *Hawk. P. C.* for a full elucidation of this subject.

ACCESSION, *property by*. The doctrine of property arising from accession is grounded on the right of occupancy, and derived from the Roman law; thus, if any given corporeal substance receive an accession, either by natural or artificial means, as by the growth of vegetables, the pregnancy of animals, the embroidering of cloth, or the conversion of wood or metal into utensils, the original owner of the thing was entitled by his right of possession to the property of it under its improved state, but if the thing itself, by such operation, was changed into a different species, as by making wine, oil, or bread out of another's grapes, olives, or wheat, it belongs to the new operator, who only makes a satisfaction to the former proprietor for the materials so converted. The brood of tame and domestic animals belongs to the owner of the dam or mother, the English law agreeing with the civil, that *partus sequitur ventrem* (the issue follows the mother); and in accordance with the Roman law principle *si equam meam equus tuus prægnatem fecerit non est tuum sed meum quod natum est* (if your horse get my mare with foal, the foal is not your property, but mine). But this maxim is for the most part disallowed in the human species. *Bracton*, l. 2, c. 2, s. 3; *Puff. De Jur. Nat. et G.*, l. 4, c. 7. The rule of the Roman law was expressed thus: *Accessio cedit principali*. *Dig.* 34, l. 2, c. 19, § 13. This term is also used in speaking of the commencement of a sovereign's reign. *Accessorium non ducit sed sequitur suum principale*, *Co. Litt.* 152. (That which is accessory does not lead but follows its principal).

Accessorius sequitur naturam sui principalis, 3 *Inst.* 139. (An accessory follows the nature of his principal).

ACCIDENT, a class of Equity jurisdiction, concurrent with Courts of Law. The Equity

meaning to be attached to this word, is not merely inevitable casualty, or the act of Providence, or what is technically called *vis major*, or irresistible force; but such unforeseen events, misfortunes, losses, acts, or omissions, as are not the result of any negligence or misconduct in the party. It is not every case of accident, which will justify the interposition of a Court of Equity. The jurisdiction being concurrent, will be maintained only; first, when a Court of Law cannot grant suitable relief; and secondly, when a party has a conscientious title to relief. Both grounds must concur in the given case; for otherwise a Court of Equity not only may, but is bound to withhold its aid. The grounds of equitable jurisdiction in these cases, will perhaps be found to resolve themselves thus:—that the party seeking relief has a clear right, which cannot otherwise be enforced in a suitable manner; or, that he will be subjected to an unjustifiable loss, without any blame or misconduct on his own part; or, that he has a superior equity to the party from whom he seeks the relief. *Grounds and Rudiments of the Law*, M. 120, p. 81 (edit. 1781); *Jeremy's Equity Juris.* B. 3, Pt. 2, introd. p. 358 *Madcock's Equity*, title "Accident;" *Story's Equity Jurisp.* title "Accident."

ACCOLA, an husbandman who came from some other country to till the land, and is thus distinguished from *incola*, viz., *accola non propriam, propriam colit incola terram* (a foreigner does not till his proper land, but a native does). *Du Fresne*.

ACCOLADE (*accoler*, Fr., *collum amplexi*, Lat.). A ceremony anciently used in knighthood, by the King's putting his hand upon the knight's neck. *Cowel. Greg. de Tours* writes, that the Kings of France, even of the present race, in conferring the gilt shoulder-belt, kissed the knight on the left cheek. The *accolée*, or blow, *John of Salisbury* assures us, was in use among the Normans; by this it was that William the Conqueror conferred the honour of knighthood on his son Henry. It was first given with the naked fist, but afterwards with the flat of a sword.

ACCOMMODATION, a friendly agreement or composition between persons at variance. An *accommodation Bill of Exchange* is where one person accepts a bill for another, there being no consideration between them, for the purpose of raising money upon it for the accommodation of one or both of them. Lord *Eldon* thus observed upon this subject, "The pernicious effect of a fabricated credit, by the undue use of such instruments, drawn out of the ordinary course of trade, have been too much felt to require any observation; the use of them where there is no real demand subsisting between the different parties is injurious to the public as well as to the parties concerned in the negotiation" (*Ex parte Wilson*, 11 Ves. 411). Unless, perhaps, in cases where, from some sudden and unexpected event, a particular

branch of commerce may be affected, and the trader unable to bring his commodities to a fair market in time to meet the payments for which he has to provide, then, by the temporary assistance of friends, through the medium of "*accommodation paper*" (to use the commercial phrase applicable to such transactions), his credit may be saved, and he may be enabled to hold his goods till some fair opportunity of sale presents itself. *Chitty on Bills, &c.*

ACCOMPLICE [*complice*, Fr., from *complex*, Lat.], one of many equally concerned in a felony; generally applied to those admitted to give evidence against their fellow criminals. *Hawk. P. C.* 37.

ACCOMPT, or ACCOUNT, [*compte*, Fr., *computo*, Lat.], an action which lies against a bailiff or receiver, who ought to render an account to his principal, but refuses to do so. If the plaintiff succeed, there are two judgments, the first is, that the defendant account (*quod computet*) before auditors appointed by the Court, and when such account is finished, then the second judgment is, that he pay the plaintiff as much as he is found in arrear. *3 Bl. C.* 164. The action of account is seldom resorted to, since it is held that the balance of account, how numerous soever the items, may be recovered by *assumpsit*, *2 Camp.* 238. But the equity remedy by bill for an account is generally resorted to, as being more complete. Consult *Story's Comm.* title "Account," and *Maddock's Principles*, c. 2.

In commerce it is a registry of debts, credits, and charges.

ACCOMPTANT-GENERALS, or ACCOUNTANT-GENERALS, officers of the Courts of Chancery, Exchequer, and Bankruptcy, appointed by Act of Parliament to receive all money lodged in those Courts respectively, and place the same in the Bank of England for security. *12 Geo. I.*, c. 32; *1 Geo. IV.*, c. 35.

ACCORD, an agreement between two or more persons, where any one is injured by a trespass, or offence done, or on a contract, to satisfy him with some recompence; which accord, if executed and performed, shall be a good bar in law, if the other party, after the accord performed, bring an action for the same trespass, &c. *Terms de Ley.*

ACCOUNT, see *Accompt*.

ACCREDULITARE, to purge an offence by oath. *Blount.*

ACCRETION of land by alluvion. Land gained from the sea, by the washing up of sand or earth, so as to form firm ground; or by dereliction, as when the sea shrinks back below the usual water-mark. If this accretion of land be by small and imperceptible degrees, it belongs to the owner of the land immediately behind, in accordance with the maxim *de minimis non curat lex*, (the law cares not about trifles,) but if it be sudden and considerable it belongs to the Crown. *Hale, De Jure Maris*, p. 14.

ACCROCHE [*accrocher*, Fr.], to hook or grap-

ple unto, to encroach. The French use it for delay, as *accrocher un procès*, to stay proceedings in a suit. *Cowel.*

ACCUMULATION, a gathering together, heaping up, or amassing. The dominion over real property, and its rents, issues, and profits, is restrained only as regards perpetuity and accumulation. The rule against perpetuities is the general landmark which bounds the proprietary right on every side, and limits that species of vanity, which, in the language of Lord Nottingham, "fights against God, by affecting a stability which human providence can never attain to." (*2 Swanst.* 460.)

The rule is thus settled,—1. That the corpus of property may be withdrawn from alienation for a life, or any number of lives in being, and twenty-one years, computed from the dropping of the life or of the surviving life.—2. That the effect may flow either indirectly from the circumstances of the takers, or directly from an arbitrary suspension of the vesting for a period measured by the life or lives of any person or number of persons in being, not otherwise connected with the gift, and for a further period of twenty-one years from the death of such person, or the survivor of such persons, not referable to minority.—3. That a child *en ventre sa mère* is, according to the general principle of law, and within the meaning of the particular rules, a life in being; so that such a child or any number of such children, may be selected either as objects of the settlement or as the measure of its continuance, the period of gestation being considered part of the life.—4. That if the vesting were suspended for the whole period allowed by the rule, and the object of the ultimate gift should, independently of intention, be, at the time of vesting, a child *en ventre*, such gift would be clearly good, and even if the gift were designedly so framed as to superadd personal disability to the suspense allowed by the rule, it should seem that the gift, though carried to the extreme verge of the law, would yet be valid.—5. That the "few months" (assuming the difficulty of fixing the limit to be overcome) are not, like the twenty-one years, admissible, as a term in gross, but only as the result of actual gestation, and as a consequence of the general principle of law, which, in construing gifts, treats a child *en ventre* as *in esse*, whence it should seem that this indeterminate allowance is not accurately introduced into the statement of the particular rule, but whether occurring at the commencement or the termination, or, as it may do, at both ends of the period, ought to be tacitly included. Thus much for the rule against perpetuity of real property.

As to trusts for the accumulation of the rents, profits, and income of land, the 39 & 40 *Geo. III.*, c. 98, (commonly called *Thelusson's act*), prohibits the settlement or disposition of any "real or personal property so and in such manner that the rents, issues,

profits, or produce thereof, shall be wholly or partially accumulated for any longer term than the life or lives of any such grantor or grantors, settlor or settlors; or the term of twenty-one years from the death of any such grantor, settlor, devisor, or testator, or during the minority or respective minorities of any person or persons who shall be living, or *en ventre sa mère*, at the time of the death of such grantor, devisor, or testator, or during the minority or respective minorities only of any person or persons who under the uses or trusts of the deed, surrender, will, or other assurance directing such accumulations, would for the time being, if of full age, be entitled unto the rents, issues, and profits, or the interest, dividends, or annual produce, so directed to be accumulated. And in every case where any accumulation shall be directed otherwise than as aforesaid, such direction shall be null and void, and the rents, issues, profits, and produce of such property so directed to be accumulated, shall, so long as the same shall be directed to be accumulated contrary to the provisions of this act, go to and be received by such person or persons as would have been entitled thereto, if such accumulation had not been directed." But by § 2, the act does not extend "to any provision for payment of debts of any grantor, settlor, or devisor, or other person or persons, or to any provision for raising portions for any child or children of any grantor, settlor, or devisor, or any child or children of any person taking any interest under any such conveyance, settlement, or devise, or to any direction touching the produce of timber or wood upon any lands or tenements." Consult *Burton's Comp. of Real Property*; *Hayes' Introd. to Conveyancing*; *Watkins Conv.*; and *Sugd. Vend. and Pur.*

ACCUMULATIVE LEGACIES. The doctrine as to these (professedly borrowed from the Civil Law), seems to be, that where the same *specific* thing is given twice, or, where in the *same will*, a like sum or quantity is given for the same cause, in the same act, and *totidem verbis*, or only with a small difference a single and not a double or accumulative legacy passes; but in general, if *equal*, *greater*, or *less* sums be given in one will or by two distinct writings of different dates, as by a will and a codicil, or by two codicils, this is an augmentation, and the legatee takes a double or accumulative legacy; but though *simpliciter* and *primâ facie*, two different instruments giving legacies, whether of the same or of a larger amount, will be held accumulative and not a substitution, yet the rule does not hold if there appear upon the face of the instrument, an intention of the testator to the contrary. 4 *Ves.* 90; 1 *P. Wms.* 424; 3 *Ves.* 289.

ACCUMULATIVE JUDGMENT. If a person under sentence for another crime is convicted of felony, the Court is empowered to pass a second sentence, to commence

after the expiration of the first; and offenders committing felony after a previous conviction for felony, may be transported for life, or for not less than seven years, or imprisoned not exceeding four years, and if a male to be once, twice, or thrice publicly or privately whipped, in addition to such imprisonment. 7 & 8 Geo. IV., c. 28, ss. 10 & 11.

Accusare nemo se debet, nisi coram Deo. Hard. 139.—(No one ought to accuse himself, except before God.)

ACCUSATION. The charging any person with a crime.

Accusator post rationabile tempus non est audiendus, nisi se bene de omissione excuserit. Moor, 817.—(An accuser ought not to be heard after the expiration of a reasonable time, unless he can account satisfactorily for not having made his accusation within such time.)

ACEMANNES-CEASTER [*Acemanni Castra.*] Bath. *Jacob.*

ACEPHALI, the levellers in the reign of Henry I., who acknowledged no head or superior. *Leges, H. I.* Also certain antient heretics who asserted but one substance in Christ and one nature.

AC ETIAM BILLÆ (and also to a bill). A clause, which was formerly inserted in a writ where the action required bail. Now no longer used.

ACHAT [*Achet, Fr.*], a contract or bargain. *Cowel.*

ACHATORS, purveyors, because they frequently bargain. *Chaucer.*

ACHELANDA, AUCHELANDIA, AUKLANDIA, Auckland, in the Bishopric of Durham.

ACHERSET, a measure of corn, conjectured to have been the same with our quarter or eight bushels. *Cowel.*

ACHOLITE, an inferior church servant, who, next under the sub-deacon, followed or waited on the priests or deacon, and performed the meaner offices of lighting the candles, carrying the bread and wine, and paying other servile attendance. This officer was in our old English called a *colet*, from which appellation came the family of Dean Colet, founder of St. Paul's School. *Cowel.*

ACHWRE [*Ach-gwre*, near belt]. An enclosure of wattles or thorns surrounding a building; at such a distance as to prevent cattle reaching and damaging the thatch. *Ant. Inst. Wales.*

ACKNOWLEDGEMENT-MONEY, a sum paid in some parts of England by copyhold tenants on the death of their landlords, as an acknowledgement of their new lords, in like manner as money is usually paid on the attornment of tenants. *Cowel.*

ACLEA [*ac*, an oak, and *leag*, place, Sax.], a field where oaks grow. *Cunningham's Abr.*

A communi observantiâ non est recedendum et minimè mutandæ sunt quæ certam interpretationem habent. Co. Litt. 365.—(Common

observance is not to be departed from, and things which have a certain meaning are to be changed as little as possible.)

ACQUEST, goods obtained by purchase or donation. *Encyc. Lond.*

Acquiescentia de shiris et hundredis, to be free from suits and services in shires and hundreds. *Cowel.*

ACQUIETARE [*quietam reddere*], to acquit, absolve. *Blount.*

ACQUITANDIS PLEGIIS, a writ of justices lying for the surety against a creditor who refuses to acquit him after the debt is satisfied. *Reg. Writs*, 158.

ACQUITTAL [*acquitter*, Fr., to free, acquit, or discharge], a deliverance and setting free of a person from the suspicion or guilt of an offence; also to be free from entries and molestations by a superior lord, for services issuing out of lands. *Cowel.* Acquittal is of two kinds.—1. *Acquittal in deed*, as when a person is cleared by verdict; and 2. *Acquittal in law*, as if two be indicted of a felony, the one as principal and the other as accessory, and the jury acquit the principal, by law the accessory is also acquitted. 2 *Inst.* 334.

ACQUITTANCE, a release or discharge in writing of a sum of money or debt due, as, where a man is bound to pay money on a bond, rent reserved upon a lease, &c., and the party to whom it is due, on receipt thereof, gives a writing under his hand witnessing that he is paid, this will be such a discharge in law, that he cannot demand and recover the sum or duty again if the acquittance be produced. *Termes de la Ley*, 15.

ACRE [*acker*, Germ., *ager*, Lat.,] a parcel of land containing in length forty perches, and in breadth four perches, or in proportion to it, be the length or breadth more or less. By the customs of various counties, the perch differs in quantity, and consequently the acre of land, the difference running from 16½ feet to 23. The general calculation is, that there are 4840 yards in an acre, i. e. 10 square chains of 22 yards each. The French acre, *arpent*, contains 1½ English acre, or 54,450 square English feet, of which the English acre contains only 43,560. The Strasburg acre is about ¼ an English acre. The Welch acre contains commonly two English acres. The Irish acre is equal to 1 acre 2 roods and 19 perches $\frac{1}{177}$ English. The Scotch 6150½ square yards, the Roman 3200, and the Egyptian *aroura* 3698½.

ACRE, or **ACRE-FIGHT**, an old sort of duel fought by single combatants, English and Scotch, between the frontiers of their kingdoms with sword and lance. It was also called *camp-fight*, and the combatants, *champions*, from the open field that was the place of trial. *Jacob.*

ACROISA, or **ACRUCIA**, blindness. *Du Fresnoe.*

ACT BEFORE ANSWER, when the lords ordain probation to be led before they de-

termine the relevancy, and then take both at once under their determination. *Scotch Law.*

ACT OF BANKRUPTCY. An endeavour by a trader to avoid his creditors, or delay, defeat, or evade their just demands. It must be committed within England or Wales, unless expressed otherwise by statute. It may be committed after the party has retired from trade, provided it be during the existence of a sufficient petitioning-creditor's debt, contracted either before the trading commenced or whilst in trade; it can never afterwards be purged or cancelled, but may be concerted or agreed upon between the trader and any creditor or other person, and it must be committed within twelve months prior to the issuing of the fiat. The acts of bankruptcy are the following:—1. Departing the realm; 2, being out of the realm, remaining abroad; 3, departing from the dwelling house; 4, otherwise absenting himself; 5, beginning to keep house; 6, suffering himself to be arrested for any debt not due; 7, yielding himself to prison; 8, suffering himself to be outlawed; 9, procuring himself to be arrested, or his goods, monies, or chattels to be attached, sequestered, or taken in execution; 10, making, or causing to be made, either within the realm or elsewhere, any fraudulent grant or conveyance of any of his lands, tenements, goods, or chattels; 11, making, or causing to be made, any fraudulent surrender of any of his copyhold lands or tenements; 12, making, or causing to be made any fraudulent gift, delivery or transfer of any of his goods or chattels; 13, lying in prison twenty-one days; 14, escaping out of prison or custody; 15, filing a declaration of insolvency; 16, not paying or securing or compounding for debt within twenty-one days after affidavit filed, or giving bond, &c., under 1 & 2 Vict., c. 110, § 8; 17, not appearing to summons or appearing and not admitting demand, or deposing to a good defence, or not paying, securing, or compounding for such demand within fourteen days, or giving bond, &c.; 18, appearing to summons and admitting demand, and not paying, tendering, securing, or compounding for such demand within fourteen days; 19, appearing to summons and admitting part of demand, and not deposing to a good defence as to residue, and not paying, tendering, receiving, or compounding for the sum admitted, or giving bond, &c., within fourteen days; 20, being served with an order of a Court of Equity, Bankruptcy, or Lunacy for payment of money, and neglecting to pay the same; 21, not paying, securing, or compounding for a judgment debt within fourteen days after notice; 22, filing petition in Insolvent Debtors' Court; 23, paying or securing petitioning-creditor's debt. As to the act of bankruptcy by a member of parliament, who is a trader, see 6 Geo. IV., c. 16, s. 10; and see *Flather's Archbold's Bankruptcy*, tit. "The Acts of Bankruptcy."

ACT OF CURATORY, extracted by the

clerk upon any one's acceptance of being curator. *Scotch Law.*

ACT OF GRACE. The act so termed in Scotland was passed in 1696; it provides maintenance for debtors imprisoned by their creditors. It is usually applied in England to insolvent acts and general pardons at the beginning of a new reign or other great occasions. *Encyc. Lond.*

ACT OF PARLIAMENT. A statute, act, or edict, made by the Queen, with the advice and consent of the lords spiritual and temporal, and the commons, in parliament assembled. Acts of parliament form the *leges scriptæ*, i. e., the written laws of the kingdom. The oldest now extant is *Magna Charta*, and the earliest statute of which any record exists is that of *Gloster*, 6 Edwd. I. The statutes from *Magna Charta* down to the end of the reign of Edward II., including also some which, (because it is doubtful to which of the three reigns of Hen. III., Edward I. or II. we should assign them), are termed *incerti temporis*, compose what have been called the *vetera statuta*; those from the beginning of the reign of Edward III. being contra-distinguished by the appellation of the *nova statuta*. An act of parliament cannot be altered, amended, dispensed with, suspended or repealed, but by the same authority of parliament which created it, the maxim being, that it requires the same strength to dissolve as to create an obligation.

Statutes are either public or private, general or special. A public or general act, is an universal rule applied to the whole community, which the Courts must notice judicially; and *ex officio*, without being formally set forth by a party claiming an advantage under it. But special or private acts are rather exceptions than rules, since they only operate upon particular persons and private concerns, and the courts are not bound to take notice of them if they are not formally pleaded, unless an express clause is inserted in them, that they shall be deemed public acts, and shall be judicially taken notice of as such, without being specially pleaded; which provision is now most usually introduced. In order to convenience of reference, the printed Statute Book of each parliamentary Session, is classed thus:—1, Public general acts; 2, Local and personal acts, declared public; 3, Private acts, printed; 4, Private acts, not printed.

With regard to the different nature of their objects or provisions, public general acts are sometimes described as declaratory, penal, or remedial; *declaratory*, make plain what the common law is or has ever been, when it has become disputable by its obscurity; *penal*, impose punishments for offences committed; and *remedial*, supply defects or redress abuses in the existing law. They are also distinguished into *enlarging* or *restraining*, *enabling* or *disabling* acts.

The principal rules for the interpretation

of acts of parliament are the following:—1, That a statute begins to operate from the time when it receives the royal assent, unless otherwise provided for. But where an act expires before a bill continuing it has received the royal assent, the latter act takes effect from the expiration of the former, unless otherwise provided, and except as to penalty. (48 Geo. III., c. 106). 2 It is to be construed equitably, not according to its mere letter, but the intent and object with which it was made; 3, that these points be considered—the old law, the mischief and the remedy; 4, that a remedial statute be more liberally, and a penal more strictly construed; 5, in construing a statute, all other such statutes made *in pari materia*, ought to be taken into consideration; 6, a statute which treats of things and persons of an inferior rank, cannot by any general words be extended to those of a superior; 7, where the provision of a statute is general, everything which is necessary to make such provision effectual, is supplied by the common law; 8, a subsequent statute may repeal a prior one, not only expressly, but by implication, as when it is contrary thereto, i. e., so clearly repugnant that it necessarily implies a negative. But if the acts can stand together, they shall have a concurrent efficacy; 9, if a statute, that repeals another, is subsequently repealed, the repealed statute revives without any formal words; and 10, acts of parliament derogatory from the power of subsequent parliaments do not bind.

Statutes are variously cited: many of the old statutes are called after the name of the place where the parliament was held which passed them, as the Statute of Merton, or Marlebridge, or Winchester, or Westminster; others are denominated entirely from their subject, as the Fines and Recoveries Act, the non-arrest Act; some are distinguished from their initial words, as the statute *Quia emptores* or *de donis*. But since the time of Edward II. they are generally cited by naming the year of the king's reign in which the statute was created, together with the chapter or particular act, according to its numerical order, as 1 Wm. IV., c. 47. All the acts of a session together make properly but one statute, and therefore, when two sessions have been held in one year, it is usual to mention stat. 1 or 2. Consult *Dwarris on the Statutes*, and *Stephen's Commentaries*, vol. 1, § 3.

Acta exteriora indicant interiora secreta, 8 Co. 146.—(External actions show internal secrets.)

ACTILIA, military utensils. *Blount.*

Actio penalís in hæredem non datur, nisi fortè ex damno locupletior hæres factus sit. Vin. Com. 756.—(A penal action does not lie against the heir, unless indeed the heir is benefited from the wrong.)

Actio quælibet in sua viâ. Jenk. Cent. 77.—(Every action proceeds in its own way.)

ACTION, the form prescribed by law for the

recovery of one's due, or it is a lawful demand of a person's right. The learned Bracton thus defines it:—" *Actio nihil aliud est quam jus prosequendi in iudicio quod alieni debetur* (an action is nothing else than the right of prosecuting to judgment that which is due to any one), *Celsus Dig. 44, tit. 7, § 51*. Actions are divided into criminal and civil; criminal actions are more properly called prosecutions, and perhaps, actions penal, to recover some penalty under statute, are properly criminal actions. Actions civil are divided into three classes:—1, *real*, which concern real property only—they are three, action of dower, dower *unde nihil habet*, and *quare impedit*; 2, *personal*, such as concern contracts, both sealed and unsealed, and offences or trespasses; the former are called *ex contractu*—they are debt, promises, covenant, account, annuity, and *scire facias*; the latter are *ex delicto*, as case, trover, detinue, replevin, and trespass *vi et armis*; 3, mixed, which lie as well for the recovery of the thing as for damages for the wrong sustained, as ejectment. See 3 *Bl. Com.*; *Stephens on Pleading*; and *Archbold's Criminal Pleading*. For the classical learning on the subject, consult *Smith's Dict. of Antiq.*, tit. "Actio."

Actio injuriarum personalis moritur cum persona. Bacon.—(A personal action on a tort (i. e., *ex delicto*), dies with the person.) But if the tort or injury be of such a nature as that thereby property is acquired, which benefits the testator, who was the wrong doer, an action for the value of the property would survive against the executor for legal waste, and equity would probably decide in respect of equitable waste, in analogy to law. *Lansdowne v. Lansdowne*, 1 *Mad.* 16; 3 & 4 *Wm. IV.*, c. 42, s. 2.

Actio non datur non damnificato. Jenk. Cent. 69.—(An action is not given to him who is not injured.)

ACTION PREJUDICIAL, otherwise called *preparatory* or *principal*, an action arising from some doubt in the principal, as in case a man sue his younger brother for lands descended from the father, and it is objected against him that he is a bastard, this point of bastardy must be tried before the cause can proceed. It is, therefore, termed *prejudicialis*, i. e., prejudged.

ACTION OF A WRIT, a phrase used, when a defendant pleads some matter by which he shews that the plaintiff had no cause to have the writ he brought, yet it may be that he is entitled to another writ or action for the same matter. *Cowel*.

ACTION OF ABSTRACTED MULTURES. An action for multures or tolls against those who are thirled to a mill, i. e., (bound to grind their corn at a certain mill), and fail to do so. *Jacob*.

ACTION FOR POYNDING ON THE GROUND, so called because founded upon some infeoffment for an annuity (whether annual rents, life rent, or feu duty, &c.), that affects the ground, and that ground

being thus debtor, it is called *debitum fundi* (a debt of the ground), for which both moveables found upon the ground may be poynded (distrained), and these failing, the property affected by this servitude may be apprized or adjudged even in prejudice of intervening singular successors. *Scotch Law*.

ACTION IN THE SCOTCH LAW, a prosecution by any party of his right, in order to obtain a judicial determination. *Scotch Dict*.

ACTIONARE (*in jus vocare*), to prosecute one in a cause at law. *Thorn's Chron*.

ACTIONARY, a commercial term used among foreigners for the proprietor of an action or share of a public company's stock.

Actiones compositæ sunt, quibus inter se homines disceptarent, quas actiones, ne populus prout vellet institueret, certas solennesque esse voluerunt. (Actions are disposed by which men dispute among themselves, which actions are made definite and solemn, lest the people proceed as they think proper.)

Actiones in personam, quæ adversus eum intenduntur, quæ ex contractu vel delicto obligatus est aliquid dare vel concedere. (Personal actions which are brought against him who, from a contract or tort, is obliged to give or allow something.)

Actionum quædam sunt in rem, quædam in personam et quædam mixtæ. Co. Litt. 284. (Some actions are upon the thing (contract), some against the person, and some mixed.)

ACTO (*Acton, Aketon, Fr., Hanqueton*). A coat of mail. *Du Fresne*.

ACTON-BURNEL. The Statute merchant 2 Edw. I., 1283, so termed from the place where it was made, situated in Shropshire. *Cowel*.

ACTOR, generally a plaintiff. In a civil or private action the plaintiff was often called by the Romans *petitor*; in a public action, (*causa publica*), he was called *accusator*. (*Cic. Ad. Att. i. 16*). The defendant was called *Reus*, both in private and public causes; this term, however, according to Cicero (*De Orat. ii. 43*), might signify either party, as indeed we might conclude from the word itself. In a private action, the defendant was often called *adversarius*, but either party might be called so with respect to the other. Also a proctor or advocate in civil courts or causes. *Actor dominicus* was often used for the lord's bailiff or attorney. *Actor ecclesiæ* was sometimes the forensic term for the advocate or pleading patron of a church. *Actor villæ* was the steward or head bailiff of a town or village. *Cowel*. In the Common Law action of replevin, both parties are deemed plaintiffs (*actores*), and therefore, when the record is carried down for trial by the defendant (which is usually the case), it is not necessary to have the proviso in the jury process (*distringas*), as in cases of trial by proviso, although in practice it is usually inserted. As either party is at liberty to carry the cause down for trial, the defendant is not entitled to

move for judgment as in case of a nonsuit under 14 Geo. II., c. 17, § 1; but if either plaintiff or defendant give notice of trial, and afterwards do not proceed to try the cause, or countermand their notice in time, the opposite party will be entitled to costs, as in ordinary cases. *Chit. Arch. Prac.* 807; *Woodfall's Land. and Ten. by Harrison*, 741.

In all bills for an account in equity, both parties are deemed plaintiffs (*actores*), and therefore the defendant, contrary to the ordinary proceedings, is entitled to orders in the cause, to which a plaintiff alone is generally entitled, as for instance, an order for a *ne exeat regno*, even against a co-defendant. So it is a general rule, that no person but a plaintiff can entitle himself to a decree; but in bills for account, if a balance be ultimately found in favour of a defendant, he is entitled to a decree for such balance against the plaintiff. And though a defendant cannot ordinarily revive a suit, which has not proceeded to a decree, yet in a bill for an account, if the plaintiff die after an interlocutory decree to account, the defendant can revive the suit against the plaintiff's personal representatives. And if the defendant die his personal representatives may revive against the plaintiff. *Story's Eq. Jurisp.* vol. 1, p. 425.

Actor sequitur forum rei. Home's L. T. 232.—(A plaintiff follows the court.)

Actori incumbit onus probandi. Hob. 103.—(The weight of proof lies on a plaintiff.)

ACTS DONE, distinguished into acts of God, of the law, and of men, hence the following maxims:—

Actus curiæ nemini gravabit. Jenk. Cent. 118.—(An act of the court hurts no person.)

Actus Dei vel legis nemini est damnosus, or facit injuriam. 5 Co. 87.—(An act of God or of law is hurtful to no one.)

Actus inceptus cujus perfectio pendet voluntate partium revocari potest; si autem pendet ex voluntate tertiæ personæ, vel ex contingenti, revocari non potest. Bacon.—(An act already begun, the completion of which depends on the will of the parties, may be recalled; but, if it depend on the consent of a third person, or on a contingency, it cannot be recalled.)

Actus legitimi non recipiunt modum. Hob. 153.—(Legitimate actions do not receive any measure.)

Actus me invito factus, non est meus actus. (An act done by me against my will is not my act.)

Actus non facit reum, nisi mens sit rea, 3 Inst. 307.—(An act itself works no offence unless the mind be guilty.)

Actus repugnans non potest in esse produci. Plowd. 355.—(A repugnant act cannot be produced as in responsible existence.)

ACTS OF SEDERUNT, ordinances of the Court of Session, under authority of the act 1540, c. 93, by which authority is given to make such statutes as may be necessary for the ordering of processes and the expe-

dition of justice. The Court is also authorized by other acts of parliament to make enactments relative to certain matters therein pointed out. *Scotch Law.*

ACTS OF THE GENERAL ASSEMBLY OF THE CHURCH OF SCOTLAND. The acts of the general assembly, issued under their legislative powers, are binding on all the members and judicatories of the church. The form of their procedure is regulated by an act of the church (1679) termed the barrier act. *Scotch Law.*

ACTUARY, a clerk that registers the acts and constitutions of the convocation; also the registrar in the Court Christian. *Jacob.* Also an officer appointed to keep Savings Banks' accounts, or the proceedings of a common Court.

ADAR (the same meaning as *Aries*, a ram, mighty). The twelfth sacred month of the Jewish calendar, and sixth of their civil year, answering to the end of February and beginning of March. As the lunar year which the Jews followed in their calculations is shorter than the solar by about eleven days, which at the end of three years make a month, they then intercalate a thirteenth month, which they call *Veadar*, or the second Adar. *Brown's Dict. of Bible; Jahn's Bib. Antiq.* c. vi. § 103.

ADCORDABILIS DENARI, money paid by a vassal to his lord upon the selling or exchanging of a feud. *Encyc. Lond.*

ADCREDULITARE, to purge one's self of an offence by oath. *Leges Mæ.* c. 36.

ADDITION, the title or estate and place of abode given to a person besides his name. *Termes de la Ley*, 20.

Additio probat minoritatem. 4 Inst. 80.—(An addition proves minority.)

Ad ea quæ frequentius accidunt jura adaptantur. Wing. 216.—(The laws are adapted to those cases which more frequently arise.)

ADELING, ETHLING or EDLING, [*ædelan*, Sax.], noble, excellency. A title of honour among the Anglo-Saxons, properly belonging to the king's children. *Spelm. Glos.*

ADELINGIA. Athelney in Somersetshire.

ADEPTION, a taking away of a legacy, i. e., if a testator, after having given a legacy by his will, alienate the subject of it during his life, it is an ademption. *Ambl.* 402.

A digniori fieri debet denominatio et resolutio. Wing. 265.—(The title and exposition ought to be made from that which is most worthy.)

AD INQUIRENDUM, a judicial writ commanding enquiry to be made of anything relating to a cause in the Superior Courts. *Reg. Judic.*

ADJOURNMENT, a putting off until another time or place. An adjournment of parliament is a continuance of the session from one day to another. 1 Bl. Com. 185. The consul used to dismiss the Roman Senate in the following words: "*Nil vos morarum, Patres Conscripti.*" *Juvenal, Sat.* iv. 144. Adjournment of parliament differs from prorogation, the former being not only for the shorter

time, but also done by the Houses themselves, whereas the latter is an act of royal authority.

Adjournamentum est ad diem dicere, seu diem dare. 4 Inst. 27.—(An adjournment is to appoint a day, or to give a day.)

ADIRATUS, a price or value set upon things stolen or lost, as a recompence to the owner. *Cowel.*

ADJUDICATION, giving or pronouncing judgment, a sentence, or decree. But in Scotch Law it is used to express the diligence by which land is attached in security and payment of debt, or by which a feudal title is made up in a person holding an obligation to convey without procuratory or precept. There is thus, 1. the adjudication for debt; 2. The adjudication in security; and 3. the adjudication in implement. *Scotch Law.*

ADJUDICATION SPECIAL, when the Lords of Sessions, proportionably to the sums due, adjudge to the creditor some part of the debtor's lands, with a fifth part more beside composition due to the superior, and the expences for obtaining enfeoffment; but if the debtor do not consent to such an adjudication, in the terms of the act 1672, all his lands and other heritable subjects are adjudged in the same manner as they were formerly apprized. *Scotch Law.*

ADJUDICATION AFTER THE OLD FORM, when the *hæreditas jacens* (the heir having renounced), is adjudged to the creditor for payment of his money. *Scotch Law.*

ADJUDICATION UPON OBLIGEMENT, when a man having obliged himself to enfeoff another in lauds disposed by him, the Lords adjudge upon his refusal to perform. *Scotch Law.*

AD JURA REGIS, a writ brought by the king's clerk presented to a living against those endeavouring to eject him, to the prejudice of the king's title. *Reg. of Writs*, 61.

ADJUSTMENT OF A LOSS, the settling and ascertaining the amount of the indemnity which the assured, after all allowances and deductions made, is entitled to receive under the policy, and fixing the proportion which each underwriter is liable to pay. *Marsh*, 529.

ADIATION, a term used in the laws of Holland for the application of property by an executor. *Knapp Rep. Privy Council*, p. 107.

ADLAMWR [*ad-lam-gwr*, one returning]. A proprietor who, for some cause, entered the service of another proprietor without agreement, if he left him after the expiration of a year and a day, he was liable to the payment of thirty pence to his patron. *Welch Law.*

AD LAPIDEM, Stoneham in Hampshire.

AD LARGUM, at large, used in the following and other expressions: title at large, assize at large, verdict at large, to vouch at large, &c. *Cowel.*

ADLEGIARE [*aleier*, Fr.], to purge of a crime by oath. *Brompt. Chron.* c. 4 & 13.

ADMANUENSES, persons who swore by lay-

ing their hands on the book. *Old Law Books.*
ADMEASUREMENT, WRIT OF. It lies against persons who usurp more than their share, in the two following cases:—admeasurement of dower, where the widow holds from the heir more land, &c., as dower, than rightly belongs to her; and admeasurement of pasture, which lies between those having common of pasture, where any one or more of them surcharges the common. *Termes de la Ley*, 23.

ADMINICLE, aid, help, or support, 1 *Edw. IV.*, c. 1. In the *Scotch Law*, it is a term used in the action of proving the tenor of a lost deed, and applicable to any deed or even scroll tending to establish the existence or terms of the deed in question.

ADMINISTRATOR, he to whom the goods and effects of a person dying intestate are committed by the ordinary. The following are limited administrations:—*Administration durante minori ætate*, is where an infant is made executor, in which case, administration with will annexed, is granted to another, until the infant executor attain the age of seventeen years, when this administration ceases. But where an infant is sole executor, the 38 Geo. III., c. 87, s. 6, provides, that probate shall not be granted unto him until his full age of twenty-one years, and that administration, with the will annexed, shall in the mean time be granted to his guardian, or such other person as the Spiritual Court shall think fit. *Administration durante absentia* is granted, when the next of kin is beyond sea, lest the goods perish or the debts be lost. *Administration pendente lite*, is granted where a suit is commenced in the Ecclesiastical Court concerning the validity of a will, until the suit be determined, in order that there should be somebody to take care of the testator's estate. *Administration cum testamento annexo*, granted when there is not any executor named in the will, or if an incapable person be named, or a person named who refuses to act. *Administration de bonis non*, granted when the first administrator dies before he has fully administered. An *ancillary administration*, because it is subordinate to the original administration, for collecting the assets of foreigners taken out in the country, where the assets are locally situate. Consult *Toller on Executors*, or *Williams' Executors and Administrators*, *Story's Conflict of Laws*, 518, 522.

ADMINISTRATRIX, a woman who has goods and chattels of an intestate committed to her charge in like manner as an administrator. *Blount.*

ADMIRAL [supposed to be derived of *Amir*, Arab., a governor, and *ἄλιος*, Gk., belonging to the sea], a high officer or magistrate having the command of the Royal Navy. The word is said by others to be derived from the Saxon *aen mere al*, over all the sea; the office of the admiralty, anciently, was called *custodia maritimæ Angliæ*. *Spel. Glos.* An admiral has two subordinate commanders under him, a vice-admiral and rear-admiral,

distinguished into three classes, by the colour of their flags, white, blue, and red. The admiral carries his flag at the main-top-mast head, the vice-admiral at the fore-top-mast head, and the rear-admiral at the mizen-top-mast head.

ADMIRALTY, THE HIGH COURT OF, held before the Lord High Admiral of England, or his deputy, styled the Judge of the Admiralty. There are two Courts, the *Instance Court*, and the *Prize Court*. The same judge presides in both Courts; in the former he sits by virtue of a commission under the Great Seal, enumerating the objects of the jurisdiction, but specifying nothing relative to prize; in the latter, he sits by virtue of a commission, which issues in every war, under the Great Seal, to the Lord High Admiral, or commissioners for executing that office, requiring the Court "to proceed upon all and all manner of captures, seizures, prizes, and reprisals of ships and goods, which are or shall be taken, and to hear and determine according to the course of the admiralty, and the law of nations." The jurisdiction extends to cases of dispute between part owners of ships, to mariners' wages, to charges for pilotage, and bottomry bonds, also as to compensation for the salvage of a ship and the property in a wreck; over suits relating to the restitution of goods illegally taken, but not as a prize, to the right of possession of a ship, to assaults and batteries on the sea, and damage done by the collision of ships. See the 2 Wm. IV., c. 51. An appeal lies to the Judicial Committee of the Privy Council. It is not a Court of Record, and its proceeding, being according to the civil law like those of the Ecclesiastical courts, it is held at the same place with the Superior Ecclesiastical Courts at Doctors' Commons, in London.

This Court formerly had cognizance of all crimes and offences committed either upon the sea, or on the coasts, out of the boundary or extent of any English county, until the 4 & 5 Wm. IV., c. 36, establishing a new Court in London, called "The Central Criminal Court," enacted by its 22d section, that with a view to speedy justice, it should be lawful for the Judges to be appointed by the commissions to be issued under the authority of the act, or any two or more of them, to enquire of, hear, and determine any offence committed or alleged to have been committed on the high seas and other places within the jurisdiction of the Admiralty of England, and to deliver the gaol of Newgate of any person or persons committed to or detained therein for any offence alleged to have been done and committed upon the high seas aforesaid, within the jurisdiction of the Admiralty of England, and all indictments found and trials and other proceedings had and taken by and before the judges of oyer and terminer and gaol delivery, should be valid and effectual, to all intents and purposes whatsoever; and any three of such judges of oyer and terminer and gaol delivery,

might order and direct the payment of the costs and expences of such prosecutions in manner prescribed and directed by the 7 Geo. IV., c. 64. In 1840, the Court of Admiralty was entirely re-constructed, its practice improved, and civil jurisdiction extended by the 3 & 4 Vict., cc. 65, 66. The advocates, surrogates, and proctors of the Court of Arches were admitted to practise there, the proceedings of the Court were assimilated to those of the Common Law Courts, particularly in respect of *viâ voce* evidence taken in open Court; power to compel the attendance of witnesses and the production of papers; to direct evidence to be taken, *viâ voce*, before a Court, to order issues to be tried in any of the Courts of Nisi Prius; bills of exception to be allowed on the trials of such issues, and with power to the Admiralty Court to direct a new trial of such issues; to make rules of Court, and to commit for contempt. Consult *Bac. Ab. "Court of Admiralty."*

ADMISSION of a clerk by the bishop, when a patron of a church has presented to it. It is, in fact, the ordinary's declaration that he approves of the presentee to serve the cure of the church to which he is presented. *Co. Litt. 344 a.*

ADMITTANCE, giving possession of a copyhold estate. It is of three kinds: 1. Upon a *voluntary grant by the lord*, where the land has escheated or reverted to him. 2. Upon *surrender* by the former tenant. 3. Upon *descent*, where the heir is tenant on his ancestor's death. *Wood, b. 2, c. 1.*

ADMITTENDO CLERICO, a writ of execution upon a right of presentation to a benefice being recovered in *quare impedit*, addressed to the bishop or his metropolitan, requiring him to *admit* and institute the clerk or presentee of the plaintiff. *Reg. Orig. 33 a.*

ADMITTENDO IN SOCIUM, a writ for associating certain persons, as knights and other gentlemen of the county, to justices of assize on the circuits. *Reg. Orig. 206.*

ADMORTIZATION, the reduction of the property of lands or tenements to mortmain, in the feudal customs. *Encyc. Lond.*

AD MURUM, Waltham or Walton.

ADNICHILED [*nihil* or *nichil*, Lat.]. Annulled, cancelled, made void, 28 Hen. VIII. *Ad officium justiciariorum spectat, uni cuique coram eis placitanti justitiam exhibere.* 2 Inst. 451.—(It is the duty of justices to administer justice to every one seeking it from them.)

AD PONTEM, Pawnton in Lincolnshire.

Ad proximum antecedens fiat relatio, nisi impediatur sententia. Jenk. Cent. 180.—(Let the antecedent relation be connected with that which follows, unless it is intervened by a sentence.)

ADQUIETO, payment. *Blount.*

Ad quæstiones facti non respondent judices & ad quæstiones legis non respondent juratores. Co. Litt. 295.—(The judges do not answer to questions of fact, the jury do not answer to questions of law.)

AD QUOD DAMNUM, a writ which ought to be issued before the Crown grants certain liberties, as a fair, market, &c., which may be prejudicial to others; it is addressed to the sheriff, to enquire what damage it may do to grant a fair, market, &c. It is also used to enquire of lands given in mortmain to any house of religion, &c. It may likewise be used for the turning and changing of ancient highways, which could not formerly be done, without a licence from the Crown, which was obtained by this writ on inquisition found, that such a change would not be a public detriment; but now a highway may be diverted by order of two magistrates. *Termes de Ley*, 26.

ADRECTARE [*addressare*], to do right, satisfy, or make amends. *Gerve Doroberen, anno*, 1170.

Ad rectè docendum oportet primum inquirere nomina, quia rerum cognitio à nominibus rerum dependet. Co. Litt. 68.—(In order rightly to comprehend a thing, enquire first into the names, for a right knowledge of things depends upon their name.)

AD TERMINUM QUI PRETERIT, a writ of entry, which lay for a lessor or his heirs, where a lease of premises had been made for life or years, and after the term had expired the premises were withheld from the lessor or his heirs, by the tenant or other person possessing the same: but now by the 4 Geo. II., c. 28, if a tenant for life, or years, or person holding under him, shall wilfully hold over after the expiration of a notice in writing, given by the landlord, and after demand of possession, the tenant will be liable to *double the yearly value* for so long a time as he detains the premises, to be recovered by an action of debt. And by the 11 Geo. II., c. 19, § 18, it is enacted, that if a tenant give notice of his intention to quit the premises (which need not be in writing), and do not deliver up possession at the time mentioned in his notice, he, or his executors or administrators, shall be liable to pay *double rent*, to be recovered by the landlord, either by distress or action at law.

AD VALOREM, a term strictly used in speaking of the duties or customs paid for certain goods; the duties on some articles are paid by the number, weight, measure, tale, &c., and others are paid *ad valorem*, that is, according to their value.

ADVENT, a coming to; also a time, containing a month preceding the nativity of Jesus Christ. It begins from the Sunday that falls either upon St. Andrew's day, being the 30th November, or next to it, and continues to the feast of Christmas day. *Blount*.

AD VENTREM INSPICIENDUM (to inspect the womb). A writ which lies for the next heir, (i. e., *verus hæres*, and not *hæres apparent*), upon which a jury, composed of men and women (though the search is made by the latter), to examine whether the widow, who is suspected to feign herself with child, in order to produce a supposititious heir to the estate, be with child or not, and if

she be, to keep her in proper restraint till delivered. This writ will lie on behalf of the tenant in tail or *hæres factus*, as a devisee in fee, in tail, or for life, to guard them against supposititious births. It has been issued in cases of *personal* estate, but this has been considered as a stretch of power. *Reg. Orig.* 227.

ADVICE, the instruction usually given by one merchant or banker to another *by letter*, informing him of the bills or draughts drawn on him, with all particulars of date, or sight, the sum, to whom made payable, &c. Where bills appear for acceptance or payment, they are frequently refused to be honoured for *want of advice*. It is also necessary to give advice, as it prevents forgery; if a merchant accept or pay a bill for the honour of any other person, he is bound to advise him thereof, and this should always be done under an *act of honour*, by a notary public. *McCulloch's Comm. Dict.*

ADVENTURE, a thing sent to sea, the adventure of which the person sending it stands to, out and home. *Lex Mercatoria*.

AD VITAM AUT CULPAM, an office which is to determine only by the death or delinquency of the holder, or which is, in fact, held *quamdù se bene gesserit* (so long as he conduct himself well). *Jacob*.

ADULTERY, formerly termed *Adwovtry*, (*quasi ad alterius thorum*.) The sin of incontinence between two married persons, or, it may be where only one of them is married, in which case it would be *single* adultery, to distinguish it from the other, which is *double*. This offence is only punishable by ecclesiastical censure and penance; the temporal courts do not take any cognizance of it as a public wrong. It is by these courts considered only as a civil injury, the remedy being by action, in which the husband may recover against the adulterer, a compensation in damages, for the loss of the society, comfort, and assistance of his wife, in consequence of the adultery. Consult *Selwyn's Nisi Prius*, title "*Adultery*."

In those countries where polygamy prevails, the sentiment in respect to the perpetration of adultery, is this: If a married man have criminal intercourse with a married woman, or with one promised in marriage, or with a widow expecting to be married with a brother-in-law, it is accounted *adultery*. If he be guilty of such intercourse with a woman who is unmarried, it is considered *fornication*. Adultery, even before the time of Moses (*Gen.* xxxviii. 24), was reckoned a crime of a very heinous nature, and was punished accordingly. In Egypt, the nose of the adulteress; in Persia, the nose and ears were cut off. (*Ezekiel* xxiii. 25). In the Mosaic code, the punishment was death. (*Lev.* xx. 10.) The Jews had a particular method of trying or rather purging an adulteress, or a woman suspected of the crime, by making her drink the bitter water of jealousy, which, if she were guilty, was said to make her swell. (*Num.* v. 17—

28.) Reuben's incest with Bilhah is the first act of adultery we read of. In ancient Greece, even the richest adulterers were amenable to the laws; but they were sometimes allowed to commute the punishment with money, and the fine called *μοιχδρπια*, was paid to the injured husband, and the father of the adulteress returned the whole dowry which he had received of her husband. Among the Romans, originally the act of adultery might be prosecuted by any person, as being a public offence, but under the emperors, the right of prosecution was limited to the husband, father, brother, patrons, and avunculus of the adulteress. Among our ancestors, the ancient Britons, adultery was severely punished. By the laws of Ethelbert, any one who committed adultery with his neighbour's wife was obliged to pay him a fine, and buy him another wife. Edmund, the Saxon, ordered it to be punished in the same way as homicide, and Canute, the Dane, ordained that an adulterer should be banished, and the woman's nose and ears should be cut off. In the time of Henry I., it was punished with the loss of eyes and genitals. *Jahn's Bib. Antiq.* c. x. §158; *Smith's Dict. of Gk. and Roman Antiq.*; *Encyc. Lond.*

The word is used in ecclesiastical writers, for a person's invading or intruding into a bishopric during the former bishop's life. The reason of the appellation is, that a bishop is supposed to contract a sort of spiritual marriage with his church.

DE ADURNI PORTU, Etherington, or Ederington.

ADVOCARE [*Tyman getyman*, Ang.-Sax.], to defend, also to vouch, to warranty. *Ant. Laws of England.*

ADVOCATE, a patron of a cause assisting his client with advice, and pleading for him. It is the same in the civil and ecclesiastical law as a counsellor at the common law. *Spel. Glos.* He is defined by Ulpian (*Dig.* 50, tit. 30), to be any person who aids another in the conduct of a suit or action.

ADVOCATI, patrons of churches. *Blount.*

ADVOCATIONE DECIMARUM, a writ which lies for tithes, demanding the fourth part or upwards, that belong to any church. *Reg. Orig.* 29.

Advocatus est, ad quem pertinet jus advocacionis alicujus ecclesiæ, ut ad ecclesiam, nomine proprio, non alieno possit præsentare. Co. Litt. 119.—(A patron is he to whom appertains the right of presentation to a church, in such a manner that he may present to such a church in his own name, and not in the name of another.)

ADVOW, or AVOW, to justify or maintain an act, e. g., one distrains for rent, and he that is distrained brings an action of replevin, if the distrainer, in his defence, justify or maintain his act, he is said to advow or avow, and his plea is called avowment or avowry.

It also signifies to call upon or produce, thus, anciently, when stolen goods were

bought by one and sold to another, it was lawful for the right owner to take them wherever they were found, and he, in whose possession they were found was bound to produce the seller to justify the sale, and so on till they found the thief. *Old Nat. Br.* 43.

ADVOWEE, or AVOWEE, the person or patron who has a right to present to a benefice. *Fleta, lib. 5, c. 14.*

ADVOWSON, a right to present to a church or ecclesiastical benefice. The person having the right to present, is styled patron, because they were originally the maintainers of and benefactors to the church; they are also called *advocati* or *avowees*, because it is presumed that the founders of the church will avow or take it into their protection, for which reason, they have another appellation, *defensores*. Advowsons, with regard to their tenure, are of two kinds; 1. *Appendant*, which is annexed to manors, lands, &c., and passes in a grant of the manor as incident to the same; 2. *Gross*, subsisting by itself, belonging to a person, and not to a manor, lands, &c. So that if an appendant be severed by deed or grant from the corporeal inheritance to which it was annexed, it becomes an advowson in gross. With regard to the mode of exercising the right, advowsons are of three kinds: 1. *presentative*, when the patron presents to the bishop or ordinary, and demands of him the institution of his clerk or presentee, provided he be found canonically qualified; 2. *collative*, when the bishop and patron are one and the same person, in which case the bishop cannot present to himself, but by one act of collation, i. e., conferring the benefice, he combines presentation and institution; 3. *donative*, when the Queen or any subject by her licence, founds a church and ordains it, to be merely in the gift of the patron subject to his visitation only, and not to that of the ordinary, it is vested then in the clerk by the patron's deed of donation, without presentation, institution, or induction. 2 *Bl. Com.* 22.

ADVOWSON OF THE MOIETY OF A CHURCH. Where there are two several patrons, and two several incumbents, in one and the same church, the one of the one moiety, and the other of the other. Or where two must join in the presentation, and there is but one incumbent, as where there are two parceners, for though they agree to present by turns, yet each of them has but a moiety of the church. Co. Litt. 17 b.

ADVOWSON OF RELIGIOUS HOUSES, Where persons founded any house of religion, they had thereby the advowson or patronage of them. *Kennett's Parochial Antiquities*, 147, 153.

ÆBUDÆ, the Hebrides or Western Isles of Scotland.

Ædificare in tuo proprio solo non licet quod alteri noceat. 3 Inst. 201.—(It is not permitted to build upon one's own land so as it may be injurious to another.)

Ædificatum solo, solo cedit. Co. Litt. 4 a.—

(That which is built upon the land goes with the land.)

ÆFESN [*Pasnagium* or *Pannagium*], the remuneration to the proprietor of a domain for the privilege of feeding swine under the oaks and beeches of his woods. This remuneration, according to *Ine.* 49, consisted of the third hog, when the fat was three fingers thick, and so on in proportion. For payment in kind, a payment of money appears to have been customary at the time of the survey. See Sir H. Ellis's *Introd. to Domesday*, vol. 1, p. 99, note. Spelman cites one or two rather far-fetched etymons of the word pannage or pasnage, but its derivation is obviously from the French *paisson*, pasture. *Antient Laws of England*.

ÆGLESBURGUS, Ailsbury in Buckinghamshire.

ÆGYLDE, or **AGYLDE**, or **ORGYLDE** [*insultus*], uncompensated, unpaid for, unavenged. From the particle of exclusion, a, æ, or ex, (Goth. *us*), and gild, *payment, requital*, &c. *Ant. Inst. Eng.*

ÆGYPTIANS, commonly called *Gypsies*. A strange kind of commonwealth, made up of wandering impostors and jugglers, who appeared in Germany in the beginning of the sixteenth century, and have since spread themselves throughout Europe and Asia. The Turks called them *Zinganeas*; they have been also called *Zigenners*, *Sziganyis*, *Cygermis*, and *Tschingenes*, all appearing to be derived from the ancient German *Zichegan* or *vagrant*. The severe statutes against these people have been repealed, and they are now only punishable as vagrants by the 5 Geo. IV., c. 83, § 4.

ÆHLIP, transgression of the law. *Antient Inst. Eng.*

ÆHTE-SWAN [*Servus Porcarius*]. A swineherd, from "æht," *possessio, pecus*, and "swan" (Old Norse, or Icelandic *sveinn*), a *servant*. *Ibid.*

Æquitas est convenientia rerum quæ cuncta cœquiparat, et quæ, in paribus rationibus, paria jura et judicia desiderat. Co. Litt. 24.—(Equity is a conveniency of things which makes all accord, and, which, in equal reasonings, desires equal rights and decisions.)

Æquitas est correctio legis generaliter latae, quæ parte deficit. Plowd. 375.—(Equity is a correction of law, when too general, in the part in which it is defective.)

Æquitas est correctio quædam legi adhibita, quia ab eâ abest aliquid propter generalem sine exceptione comprehensionem. Plowd. 467.—(Equity is a certain correction applied to law, because on account of its general comprehensiveness, without an exception, something is absent from it.)

Æquitas est perfecta quædam ratio quæ jus scriptum interpretatur et emendat; nulla scriptura comprehensa, sed sola ratione consistens. Co. Litt. 24.—(Equity is a sort of perfect reason which interprets and amends the written law; comprehended in no code, but consistent with reason alone.)

Æquitas est quasi equalitas. Co. Litt. 24.—(Equity is as it were equality.)

Æquitas est verborum legis sufficiens directio, quæ una res, solummodo, cavetur verbis, ut omnis alia in æquali genere, iisdem cavetur verbis. (Equity is the efficient application of the language of the law, so that although only one thing is guarded against by its language, every other thing in the same category is also guarded against by the same language.)

Æquitas sequitur legem. Gilb. 136.—(Equity follows Law.)

Æquum et bonum, est lex legum. Hoh. 224.—(That which is equal and good is the Law of Laws.)

ÆRA, or **ERA**, a fixed point of chronological time whence any number of years is begun to be counted. The origin of the term is contested, though it is generally allowed to have its rise in Spain. Sepulveda supposes it formed from A. ER. A. the *notæ* or abbreviations of the words *annus erat Augusti*, occasioned by the Spaniards beginning their computation from the time their country came under the dominion of Augustus, or that of receiving the Roman calendar.

The difference between the terms *æra* and *epoch* is, that the *æras* are certain points fixed by some people or nation, and the *epochs* are points fixed by chronologists and historians. The idea of an *æra* comprehends also a certain succession of years proceeding from a fixed point of time, and the *epoch* is that point itself. Thus the Christian *æra* began at the epoch of the birth of our Saviour. *Kock's History of Europe, Introd.; Encyc. Lond.*

ÆRIE [*aeria accipitum*], an airy or nest of goshawks. *Spel. Glos.*

ÆSTIMATIO CAPITIS [*pretium hominis*]. Fines paid for offences committed against persons according to their degree and quality, by estimation of their heads, ordained by King Athelstane. *Cress. Ch. Hist.* 834.

Æstimatio præteriti delicti, ex postremo facto, nunquam crescit. Bacon.—(The estimation of a committed crime never increases from a subsequent fact.)

ÆTATE PROBANDA, a writ enquiring whether the king's tenant holding in chief by chivalry, was of full age to receive his lands. It was directed to the escheator of the county, now disused. *Reg. Orig.* 294.

ÆTHELING, a noble, though generally signifying a prince of the blood. *Ant. Inst. Eng.*

ÆTHLYP [*evasio, escape, assault*]. But the old Latin version renders it *conclamatio*. *Ibid.*

Affectio tua nomen imponit operi tuo. Co. Litt. 177.—(The affection of a party gives a name to his work.)

Affectus punitur licet non sequatur effectus. 9 Co. 96.—(It is lawful that the intention be punished, although the consequence do not follow.)

AFFEERORS [*affeurer, Fr., to tax*]. Persons, who, in court leets, upon oath, settle

and moderate the fines and amercements imposed on those who have committed offences arbitrarily punishable, or that have no express penalty appointed by statute. They are also appointed to moderate fines, &c., in courts baron. *Cowel.*

AFFIANCE [*fidem dare*, Lat.]. The plighting of troth or promise between a man and woman, upon agreement of marriage. *Termes de Ley*, 27; *Litt. s.* 39.

AFFIDARE, to plight one's faith, or give or swear fealty, i. e., fidelity. *Blount.*

AFFIDATIO DOMINORUM, an oath taken by the lords in parliament. *Ibid.*

AFFIDATUS, a tenant by fealty, a retainer. *Ibid.*

AFFIDARI [*seu affidari ad arma*], to be mustered and enrolled for soldiers upon an oath of fidelity. *MS. Dom de Farendon*, 22, 55.

AFFIDAVIT, an oath in writing, sworn before some person, who has authority to administer such oath, and the true place of habitation, and true addition of every deponent, is to be inserted in the affidavit. 1 *Lill. Ab.* 44, 46. The affidavit ought to set forth the matter of fact only intended to be proved, it ought not to declare the merits of the case of which the court is to judge. 21 *Car.* 1, B.R. By the orders of 8th May, 1845, affidavits in the High Court of Chancery are to be taken and expressed in the first person of the deponent (cxxvi). cxxvii. All copies of affidavits are to be ready for delivery within forty-eight hours after the same are bespoke. cxxviii. Any solicitor, party, or person filing an affidavit not taken and expressed in the first person of the deponent is not to be allowed the costs of preparing and filing such affidavit in any taxation of costs.

AFFINAGE [*purgatio metalli*], refining of metal, hence fine and refine. *Blount.*

Affinitas dicitur, cum duæ cognationes, inter se divisæ, per nuptias copulantur, et altera ad alterius fines accidit. Co. Litt. 157.—(It is called affinity, when two families, divided from one another, are united by marriage, and one of them approaches the confines of another.)

AFFINITY, relation by marriage between the husband and the blood relations of the wife, and between the wife and the blood relations of the husband. 1 *Bl. Com.* 434.

Affinity is distinguished into three kinds.

1. *Direct affinity*, or that subsisting between the husband and his wife's relations by blood, or between the wife and the husband's relations by blood. 2. *Secondary affinity*, or that which subsists between the husband and his wife's relations by marriage. 3. *Collateral affinity*, or that which subsists between the husband and the relations of his wife's relations.

AFFIRM, to ratify or confirm a former law or judgment. *Cowel.*—The substantive *affirmance* is thus used.

Affirmanti, non neganti incumbit probatio.—(The proof lies upon him who affirms, not upon him who denies.)

AFFIRMATION, an indulgence to the peo-

ple called *Quakers*, who, in lieu of an oath may make a solemn affirmation that what they say is true, in giving evidence either in civil or criminal causes. False affirmations are liable to the penalty of perjury. 9 Geo. IV., c. 32.

Affirmativum negativum implicat.—(An affirmation implies a negative.)

AFFORARE, to set a price or value on a thing. See **AFFER**. *Blount.*

AFFORATUS, appraised or valued, as things vendible in a fair or market. *Ibid.*

AFFORCIAMENT, a fortress, strong hold, or other fortification. *Blount.*

AFFORCIARE, to add, encrease, or make stronger; in case of disagreement of the the jury, let the assize be encreased. *Blount.*

AFFOREST, to turn ground into a forest. *Chart de Forest*, c. 1.

AFFRANCHISE, to make free.

AFFRAY [*effrayer*, Fr., to affright]. A skirmish or fighting between two or more, and there must be a stroke given or offered, or a weapon drawn, otherwise it is not an affray. It is a public offence to the terror of the community, and so called because it affrights or makes persons afraid. It differs from assault in that it is a wrong to the public, while an assault is of a private nature. 1 *Hawkins*, P. C. 135.

AFFREIGHTMENT [*fret*, Fr.], the freight or lading of a ship. *Cowel.*

AFFRI, or **AFFRA**, bullocks, horses, or beasts of the plough. *Ibid.*

A FORTIORI [by so much stronger (reason)]. It is thus applied:—any private person, and *à fortiori*, a peace officer (*it being his especial duty*), who is present at the commission of any felony, is bound by the law to arrest the felon, on pain of fine and imprisonment, if he escape through the negligence of the standers by. 2 *Hawk. P. C.* 74.

AFRICAN COMPANY, enjoyed under a charter of Charles II., an exclusive trade from the port of Sallee, in South Barbary, to the Cape of Good Hope, both inclusive, with all the islands near to those coasts. After several statutes, placing their trade upon a new footing, the 1 & 2 Geo. IV., c. 28, abolished the company and annulled all the grants made to them, the Crown took possession of the forts and castles, and the trade was thrown open.

AFRICAN SLAVE TRADE, abolished by 3 & 4 Wm. IV., c. 73; the 7 Wm. IV., and 1 Vic. c. 91, made the slave trade piracy, and the 1 & 2 Vic. c. 3, § 19, abolished slavery apprenticeship, and gave compensation.

AGALMA, an impression or image of anything on a seal. *Cowel.*

AGE, those legal periods, in the lives of males and females, enabling them to do certain acts, which, before arriving at such periods, they are prohibited from doing. Thus in criminal matters, a person of the age of fourteen may be capitally punished for any capital offence, but under the age of seven

he cannot. The period between seven and fourteen is subject to much uncertainty, it depends upon the infant's capacity to discern good from evil, if he could, then the maxim is, that *malitia supplet ætatem*, (malice supplies the want of age,) and he may be convicted and undergo judgment and execution, or death. A male at twelve years old may take the oath of allegiance, at fourteen is at years of discretion, so far at least that he may enter into a binding marriage, or consent or disagree to one contracted before, and at twenty-one, he is at his own disposal, and may aliene his lands, goods, and chattels. A female at twelve is at years of maturity, and may enter into a binding marriage, or consent or disagree to one contracted before, and at twenty-one may dispose of herself and all her property. Full age in male or female is twenty-one years, which age is completed on the day preceding the anniversary of a person's birth. 1 Co. Litt. 78.

AGE-PRIER or PRAYER, to pray age, thus, when an action is brought against a minor for the recovery of lands, which he possesses by descent, he petitions or moves the court to stay the action until he attain his majority, which is generally acceded to. *Termes de Ley*, 30.

AGENFRIDA, the true lord or owner of anything. *Cowel*.

AGENHINA, a guest at an inn, who has stayed there for three nights, and was then accounted one of the family. *Ibid*.

AGENT, a person appointed to transact the business of another. *Dyche*.

AGENT and PATIENT, when the same person is the doer of a thing and the party to whom done; thus, where a widow endows herself of the best part of her husband's possessions, this being the act of herself to herself, she is both agent and patient. Again, if one be indebted to another, and afterwards the debtor makes the creditor his executor, the creditor may retain out of the testator's assets as much as will satisfy the debt, by such retainer he is both agent and patient. 8 Rep. 118, 138.

Agentes et consentientes, pari poena plectentur. 5 Co. 80.—(Parties, both acting and consenting, are liable to the same punishment.)

AGILD [*sine mulctâ*], free from penalties, not subject to customary fines or impositions. *Blount*.

AGILER [*a gilt*, Sax., without fault], an observer or informer. *Ibid*.

AGILLARIUS, an hey-ward, herd-ward, or keeper of cattle in a common field, solemnly sworn at the lord's court. There were two sorts, one of the town or village, another of the lord of the manor. *Ken. Paroch. Antiq.* 534, 576.

AGIO, a term used to express the difference in point of value, between metallic and paper money, or between one sort of metallic money and another. *McCulloch's Comm. Dict*.

AGIST [*giste*, Fr., a bed or resting place], to

take in and feed strangers' cattle in the Royal Forest, and to collect the money due for it. *Mann. Forest Laws*, c. 11 to 80.

Agistatio animalium in forestâ, the drift or numbering of cattle in the forest. *Ibid*.

AGISTERS, or GIST TAKERS (called also *Agistators*), officers appointed to look after the cattle, &c. *Ibid*.

AGISMENT, where other men's cattle are taken into any ground, at a certain rate per week; so called, because the cattle are suffered *agiser*, i. e., to be *levant et couchant* there. Many great farms are employed for this purpose. Also the profit of such feeding. *Agistment* of sea banks [*terræ agistatæ*], where lands are charged with a tribute to keep out the sea. *Spel. Wats.* c. 50.

AGIUS [*ἅγιος*, Gk.], holy. *Mon. Ang.* 15, 17.

AGNUS DEI, a piece of white wax, in a flat, oval form, like a small cake, stamped with the figure of a lamb, and consecrated by the Pope. *Cowel*.

AGNATES, or AGNATI, the father's relations. 2 Bl. Com. 234.

AGRARIA LEX. The Agrarian law was enacted to distribute among the Roman people all the lands, which they had gained by conquest, and for limiting the quantity of ground possessed by each person, to a certain number of acres. *Cicero pro Leg. Agr.*; *Smith's Dict. of Antiq.*; *Harrington's Oceana*. It is not exactly true that the agrarian law of Cassius was the earliest that was so called: every law by which the commonwealth disposed of its public land, bore that name, as, for instance, that by which the domain of the kings was parcelled out among the commonalty, and those by which colonies were planted. Even in the narrower sense of a law whereby the state exercised its ownership in removing the old possessors from a part of its domain, and making over its right of property therein; such a law existed among those of Servius Tullius. (*Nieb. Rom. Hist.* vol. ii. p. 129, transl.).

An agrarian law was clearly developed in the regulations of the Jewish lawgiver, who following the example of the Egyptians, made agriculture the basis of the state. He accordingly apportioned to every citizen a certain quantity of land, and gave him the right of tilling it himself, and of transmitting it to his heirs. The person who had thus come into possession could not alienate the property for any longer period than the year of the coming jubilee—a regulation which prevented the rich from coming into possession of large tracts of land, and then leasing them out in small parcels to the poor. It was another law of Moses, that the vendor of a piece of land, or his nearest relative, had a right to redeem the land sold whenever they chose, by paying the amount of profits up to the year of jubilee. *Ruth* iv., 4; *Jer.* xxxii. 7; *Jahn's Bib. Antiq.*; *Graves on the Pentateuch*.

AGREEMENT, a joining together of two or more minds in anything done or to be done.

Also, the effect of a joint-consent of two or more parties to a contract or bargain. There are three sorts :—1. An *agreement executed* at once, as where money is paid for the matter agreed, or other satisfaction made, at the time it is entered into. 2. An agreement after an act done by another, as where one does a thing and another afterwards agrees to it, this is also called an executed agreement. 3. An *agreement executory*, or to be performed at some future time. *Termes de Ley*, 31; *Plowd.* 5.

AGRI, arable lands in the common fields. *Fortescue*.

AGUSADURA, in ancient customs, a fee, due from the vassals to their lord for sharpening their ploughing tackle. Anciently, the tenants in some manors were not allowed to have their rural instruments sharpened by any but whom the lord appointed; for which an acknowledgement was paid, called *agusa-dura* or *agusage*, which some take to be the same with what was otherwise called *rullage*, from the ancient French *reille*, a plough-share. *Encyc. Lond.*

AGWEDDI [*ag-gwedd*, conjunction]. A portion given with a bride. *Ant. Inst. Wales*.

AIDS, originally mere benevolences granted by a tenant to his lord, in times of distress, but at length the lords treated them as a matter of right, and not of discretion. They were principally three. 1. To ransom the lord's person, if taken prisoner. 2. To make the lord's eldest son and heir apparent a knight. 3. To give a suitable portion to the lord's eldest daughter on her marriage. Abolished by 12 *Car. II.*, c. 24.

AID OF THE KING [*auxilium regis*]. The king's tenant prays this, when rent is demanded of him by others. A city or borough, holding a fee farm from the king, if anything be demanded which belongs to such fee farm, may pray in "aid of the king," and the king's bailiffs, collectors or accountants shall have aid of the king. The proceedings are then stayed until the crown-counsel are heard, but this aid will not be granted after issue joined, because the Crown cannot rely upon the defence made by another. *Jenk. Cent.* 64.

AID PRAYER, formerly made use of in pleading for a petition in court, praying in aid of the tenant for life, &c., from the reversioner or remainder-man, when the title to the inheritance was in question. It is a plea in suspension of the action. *Com. Dig.* "Aide" B. 5; 2 *Bos. & Pul.* 384.

AIDERS, advocates, abettors. See ACCESSARY.

AIEL, or AILE [*aieul*, Fr., a grandfather], a writ which lay when a man's grandfather, or great grandfather (called *besaile*), being seized of lands in fee simple on the day of his death, the heir, on the same day, became dispossessed of his inheritance by a stranger. *F. N. B.* 222.

AILLT [*aill*, other]. A villain. *Ant. Inst. Wales*.

AL, or ALD [*eald*, Sax., age]. This syllable

prefixed to the names of places denotes antiquity, as Aldborough, i. e., Old Borough, Aldeburgh, Aldworth, Aldgate, &c. *Blount*. ALA CAMPI, Wingfield.

ALÆ ECCLESIAE, the wings or side aisles of a church. *Ibid.*

ALÆMIS, the river Ax, in Devonshire.

ALANERARIUS, a manager and keeper of dogs for the sport of hawking; from *alanus*, a dog known to the ancients. A falconer. *Blount*.

ALAUNA, Alnwick in Northumberland; also Alcester in Warwickshire.

ALBA, a surplice or white sacerdotal vest, anciently worn by the officiating priests. *Blount*.

ALBA FIRMA. When quit rents payable to the Crown by freeholders of manors, were reserved in silver or white money, they were called white-rents or blanch-farms, *reditus-albi*, in contradiction to rents reserved in work, grain, &c., which were called *reditus-nigri*, black-mail. 2 *Inst.* 19.

ALBA MARLA, Albermarle.

ALBINEIO DE, DE ALBENETO, D'AUBENEY, Albiney.

ALBERGENIUM, an habergeon, a defence for the neck. *Hoveden*, 611.

ALBINATUM JUS, the *droit d'aubaine* in France, whereby the king, at an alien's death, is entitled to all his property, unless he had peculiar exemption. Repealed by the French laws in June, 1791.

DE ALBO MONASTERIO, Whitchurch.

ALBREA and ALBERICUS, Aubrey.

ALBUM, white rent paid in silver. See ALBA FIRMA.

ALDER, the first, as *alder best*, is the best of all, *alder liefest*, the most dear. *Blount*.

ALDERMAN [*ealderman*, Sax.], originally a dignity of the highest rank, both hereditary and official, nearly synonymous to that of king. In the *Sax. Chron.*, Cerdic, founder of the kingdom of Wessex, and his son Cynric, are denominated "aldormen." They were also governors of provinces, and, in that capacity, presided in the Hundred Court. After the breaking up of the Hephtharchy, we find them, under the supremacy of Wessex, occupying the place of kings, in the conquered kingdoms of Mercia and East Anglia. In the latter days of Anglo Saxon sovereignty, under those miserable princes Ethelred and his son Edward, the dignity of ealdorman seems to have reached its highest point, from which it rapidly descended, their functions being either suppressed or exercised by officials under other denominations, until the once great name remained alone to that civic magistrate, of whom the earliest traces are, perhaps, to be found in the time of Edward the Confessor. *Sic transit*, &c. Aldermen at this day are associates to the civil magistrate of a city or town corporate. *Spel. Glos.*

ALDERNEY, one of the islands in the English Channel, which formed part of the Duchy of Normandy, and was annexed to the English Crown by the first princes of the Norman line. They are governed by their own laws,

chiefly collected in the book called "*Le Grand Constabler*."

DE ALDITHELEIA, Audley.

ALECENARIUM, a sort of hawk called a lanner. *Blount*.

ALE CONNER, or ALE TASTER, an officer appointed at every court-leet, who is sworn to look at the assize and goodness of ale and beer within the precincts of the lordship. *Kitch.* 46. There are also four ale-conners, chosen by the liverymen of the city of London, in common hall, on Midsummer day, whose office it is to inspect the measures used in public houses. *Encyc. Lond.*

ALE-HOUSES, a place where ale, beer, &c., are drunk. *Burn's Justice*. As to licensing ale-houses, consult 9 Geo. IV., c. 61.

ALE-SILVER, a rent or tribute paid annually to the Lord Mayor of London, by those who sell ale within the liberty of the city. *Antiq. Purvey*, 183.

ALE-STAKE, a maypole or long stake driven into the ground, with a sign on it for the sale of ale. *Cowel*.

ALE-TASTER, see ALE-CONNER.

ALFET, a cauldron or furnace, into which boiling water was poured, in which a criminal plunged his arm up to the elbow and there held it for some time, as an ordeal. *Du Cange*.

ALIAMENTA, a liberty of passage, open way, water-course, &c., for the tenants' accommodation. *Kitch.*

ALGARUM MARIS, probably a corruption of *Loganum maris*, *lagan* being a right, in the middle ages, like *jetson* and *flotson*, by which the goods thrown from a vessel in distress became the property of the king or the lord on whose shores they were stranded. *Spel. Jacob*, and *Du Cange*.

ALIAS (otherwise), a second or further writ, which is issued after a *first* writ has expired without effect, and containing this clause, "We command you, as we formerly have commanded you (*sicut alias præcepimus*)."
Cowel.

ALIAS DICTUS (otherwise called), a second name belonging to a person besides that which may have been already expressed. *Dyer*, 50.

ALIBI, elsewhere. It is a defence resorted to in criminal prosecutions, where the party accused, in order to prove that he could not have committed the crime with which he is charged, offers evidence that he was in a different place at the time the offence was being committed. *Encyc. Lond.*

ALIEN, a person born in a foreign country, out of the allegiance of the British Crown. Consult the 7 & 8 Vict. c. 66, which relaxes the law of aliens much in their favour.

ALIENATION, a transferring the property of a thing to another. *Co. Litt.* 118.

Alieniga est alienæ gentis, seu alienæ ligeantiæ, qui etiam dicitur perigrinus, alienus, exorticus, extraneus, &c. 7 Co. 16.—(An alien is of another nation or allegiance, who is also called a stranger, foreigner, &c.)

Alienatio, i. e., *alienum facere*; vel, *ex nostro*

dominio in alienum transferre; sive, rem aliquam in dominium alterius transferre. Co. Litt. 118.—(Alienation, that is, to make alien, or to transfer from our ownership into a foreign one, or to transfer anything into the power of another.)

Alienatio licet prohibeatur, consensu tamen omnium, in quorum favorem prohibita est, potest fieri, et quilibet potest renunciari juri pro se introducto. Co. Litt. 93.—(Although alienation be prohibited, yet by the consent of all in whose favour it is prohibited, it may take place; for it is in the power of any man to renounce a law made in his own favour.)

Alienatio rei præfertur juri accrescendi. Co. Litt. 185.—(The alienation of property is preferred to the right of accumulation.)

ALIMENT, a fund for maintenance.

Alimentorum appellatione venit victus, vestitus et habitatio. 2 Inst. 17.—(Within the meaning of the word *aliment* come food, clothes, and habitation.)

ALIMONY, an allowance legally allowed to a wife after a divorce *à mensâ et thoro*, out of the husband's estate. It is fixed at the discretion of the ecclesiastical judge. But in case of elopement and living with an adulterer, the law allows her no alimony; for as that amounts to a forfeiture of her dower after his death, it is also a sufficient reason why she should not be a partaker of his estate when living. 1 Bl. Com. 441.

Aliquid conceditur ne injuria remaneat impunita, quod alias non concederetur. Co. Litt. 197.—(Something is conceded, which otherwise would not be conceded, lest an injury should remain unpunished.)

Aliquis non debet esse judex in propria causa, quia non potest esse judex et pars. Co. Litt. 141.—(No one should be judge in his own cause, because he cannot be both a party and a judge.)

ALITER, otherwise.

Aliter puniuntur ex eisdem factionibus servi, quam liberi; et aliter qui quidem aliquid in dominum, parentemve commiserit, quam in extraneum; in magistrum, quam in privatum. 3 Inst. 220.—(Slaves and children are punished differently for the same action; actions committed against persons in the capacities of masters or parents, are punishable differently from actions committed where such a connection exists not; there is a difference also observed where the party offended is a magistrate, and where only a private person.)

Aliud est celare, aliud tacere.—(To conceal is one thing, to be silent another.)

Aliud est possidere, aliud esse in possessione. Hob. 103.—(It is one thing to possess, it is another to be in possession.)

ALLAUNDS [*ab alanis, Seythiæ gente*], hare-hounds. *Cowel*.

ALLAY, the mixture of other metals with silver or gold, to increase the weight, in order to defray the charge of coinage, and to make it more fusile to cast. A pound weight of gold, by the present mint standard, is twenty-two carats fine and two carats allay. A carat weighs four grains. A pound of silver

consists of eleven ounces two penny-weights of fine silver, and eighteen penny-weights of alloy. *Lowdnes's Essay on Coins*, p. 19.

Allegans contraria non est audiendus. Jenk. Cent. 16.—(A person alleging a contradictory deposition is not to be heard.)

Allegans suam turpitudinem non est audiendus. 4 Inst. 279.—(A person alleging his own infamy is not to be heard.)

Allegari non debuit quod probatum non relevat. 1 Chan. c. 45.—(That which if proved would not be relevant, ought not to be alleged.)

ALLEGATA, a word anciently subscribed at the bottom of rescripts and constitutions of the emperors, as *signata* or *testata* was under other instruments. *Encyc. Lond.*

ALLEGIANCE, the natural, lawful, and faithful obedience which every subject owes to his prince. It is either perpetual, where one is a subject born, or has been naturalized, or temporary, during a residence in the British dominions. 1 Inst. 129 a.

ALLEGIARE, to defend or justify by due course of law. *Spel.*

ALLER, superlatively, as *aller good* is the greatest good. *Blount.*

ALLER SAN JOUR, to go without day, i. e., to be finally dismissed from the Court, because there is no further day assigned for appearance. *Kitch.* 146.

ALLEVIARE, to levy or pay an accustomed fine. *Cowel.*

ALLIANCE [*alleanga*, It., *alianca*, Sp., *alliance*, of *allier*, Fr., of *alligo*, Lat., to lie or unite together], the state of connection with another by confederacy; a league. In this sense our histories of Queen Anne, mention *the grand alliance*; relation by marriage; relation by any form of kindred; the act of forming or contracting relation to another; the act of making a confederacy; the persons allied to each other.

The forms or ceremonies of alliances have been various in different ages and countries. Among us, signing and swearing are the chief; anciently, eating and drinking together, chiefly offering sacrifices together were the customary rites of ratifying an alliance. Among the Jews and Chaldeans, heifers or calves; among the Greeks, bulls or goats; and among the Romans, hogs were sacrificed on this occasion. Among the ancient Arabs, alliances were confirmed by drawing blood out of the palms of the hands of the two contracting princes with a sharp stone, dipping therein a piece of their garments, and therewith smearing seven stones, at the same time invoking the gods Vrotalt and Alilat, i. e., according to Herodotus, Bacchus and Urania. Among the people of Colchis, the confirmation of alliances is said to be effected by one of the princes offering his wife's breasts to the other to suck, which he was obliged to do till there issued blood. *Encyc. Lond.*

ALLOCATION, an allowance made upon account in the Exchequer, or rather a placing or adding to a thing. *Ibid.*

ALLOCATIONE FACIENDA, a writ allowing

to an accountant such sums of money as he has lawfully expended in his office; it is addressed to the Lord Treasurer, and the Barons of the Exchequer. *Reg. Orig.* 206.

ALLOCATO COMITATU, a writ of exigent allowed, before any other county court, holden on a former writ not being fully served or complied with. *Fitz. Exig.* 14.

ALLOCATUR (it is allowed). The certificate of the allowance of costs by the master on taxation. *Jacob.*

ALLODIAL, or ALLODIUM, a holding of lands without acknowledging any superior lord, contradistinguished from *Feudal* lands, which are held of superiors. *Cowel.* There are not any allodial lands in England, according to Sir E. Coke. *Co. Litt.* 93 a.

ALLOWANCE, a deduction, an average payment. A bankrupt is allowed by the commissioner, before the choice of assignees, and after such choice by the assignees, with the approbation of the commissioner, testified in writing under his hand, from time to time to make such allowance out of his estate, until he shall have passed his last examination, as shall be necessary for the support of himself and family. 6 Geo. IV., c. 16, § 114.

By 5 & 6 Vict. c. 122, § 44, it is enacted that every bankrupt who shall have obtained his certificate under any fiat issued after the commencement of this act (11 Nov. 1842), if the net produce of his estate in hand shall by any order of dividend (with or without prior dividend), pay the creditors, who before or at the time of making such order, have proved debts under the fiat, *ten shillings* in the pound, shall be allowed and paid *five pounds per centum* out of such produce, provided such allowance shall not exceed *four hundred pounds*; and every such bankrupt, if such produce shall (with or without prior dividend), pay such creditors *twelve shillings and sixpence* in the pound, shall be allowed and paid as aforesaid, *seven pounds ten shillings per centum*, provided such allowance shall not exceed 500*l.*, and every such bankrupt, if such produce shall (with or without prior dividend), pay such creditors *fifteen shillings in the pound*, or upwards, shall be allowed and paid as aforesaid, *10*l.* per centum*, provided such allowance shall not exceed *six hundred pounds*; and provided always that such allowance as aforesaid, shall not be payable to any bankrupt until after the expiration of twelve months from the date of the fiat, and such allowance shall then be payable only in the event of the dividends paid to the creditors who at any time before the expiration of such twelve months shall have proved debts under the fiat, being of the requisite amount in that behalf aforesaid, if at the expiration of such time the dividends paid as aforesaid shall *not amount to ten shillings in the pound*, it shall be lawful for the Court to allow such bankrupt so much as the assignees and Court shall think fit, not exceeding *three pounds per centum* and *three hundred pounds*. And by § 45, it is

enacted, that in all joint flats under which any partner shall have obtained his certificate, if a sufficient dividend shall have been paid upon the joint estate, and upon the separate estate of such partner, he shall be entitled to his allowance, although his other partner may not be entitled to any allowance.

Also in selling goods, or in paying duties upon them, certain deductions are made from their weights, depending on the nature of the packages in which they are enclosed, and which are regulated in most instances by the custom of merchants, and the rules laid down by public offices. These allowances, as they are termed, are distinguished by the epithets *draft*, *tare*, *tret*, and *cloff*.

Draft is a deduction from the original or gross weight of goods, and is subtracted before the tare is taken off.

Tare is an allowance for the weight of the bag, box, cask, or other package, in which goods are weighed.

Real, or *open tare*, is the actual weight of the package.

Customary tare is, as its name implies, an established allowance for the weight of the package.

Computed tare is an estimated allowance agreed upon at the time.

Average tare is when a few packages only among several are weighed, their mean or average taken, and the rest tared accordingly.

Super-tare is an additional allowance or tare where the commodity or package exceeds a certain weight.

When tare is allowed the remainder is called the net weight; but if tret be allowed, it is called the *suttle weight*.

Tret is a deduction of 4lbs. from every 104lbs. of *suttle weight*. This allowance, which is said to be for dust or sand, or for the waste or wear of the commodity, was formerly made on most foreign articles sold by the pound avoirdupois; but it is now nearly discontinued by merchants, or else allowed in the price. It is wholly abolished at the East India warehouses in London, and neither tret nor draft is allowed at the Custom-house.

Cloff, or *Clough*, is another allowance that is nearly obsolete. It is stated in arithmetical books to be a deduction of 2lbs. from every 3 cwt. of the *seconduttle*, that is, the remainder after tret is subtracted; but merchants, at present, know *cloff* only as a small deduction, like draft, from the original weight, and this only from two or three articles. See *Kelly's Cambist*, art. "London," and *McCulloch's Comm. Dict.*

ALLONGE [Fr., an eking piece], a paper annexed to a bill of exchange, which is rendered necessary when there are so many successive endorsements to be made that the original paper would not contain them. *Story on Bills*, 225.

ALLTUD [*all-tud*, other land], a person either from foreign parts or from another part of the island, in villenage under the king or freeholder. *Ant. Inst. Wales*.

ALLUMINOR, one who anciently illuminated,

coloured, or painted upon paper or parchment, particularly the initial letters of charters and deeds. The word is used in the 1 Ric. III., c. 9.

ALLUVION, land gained from the sea by the washing up of sand and soil, so as to form *terra firma*. 2 Bl. Com. 261; *Res Cotidianæ Dig.* 40; tit. 1, § 7.

ALMANACK [*al*, Arab., and *manah*, Heb., to count or compute; or *al*, and *μην*, a month, or *μαρτυρος*, the course of the month, or, from a Teutonic original *al* and *maan*, the moon, an account of every moon or month], a book or instrument in which is recounted the days of the week, month, and year, both common and particular, distinguishing the fasts, feasts, terms, &c., from the common days by proper marks, pointing out also the several changes of the moon, tides, eclipses, &c. It is part of the law of England, of which the courts must take notice in the returns of writs, &c., but the almanack to go by is that annexed to the Book of Common Prayer. 6 Mod. 41, 81.

ALMARIA, the archives or muniments of a church or library. *Blount*.

ALMNER, or **ALMONER**, an officer of the king's household, whose business it was to distribute the king's alms every day. The lord almoner has the disposition of the king's dish of meat, after it comes from the table, which he may give to whom he pleases. It is usually some bishop. *Flota*, lib. 2, c. 22. The present Lord High Almoner is the Archbishop of York.

ALMODARII, the lords of free manors, lords paramount. *Old Records*.

ALMOIN, a tenure of lands by divine service. *Antient Customs*.

ALMONARIUM, a kind of safe or cupboard, in which broken victuals were laid up to be distributed among the poor. *Old Records*.

ALMSFEOH, or **ALMESFEOH** [Sax.], alms-money. It has been taken for *Peter pence*, first given to the Pope by Ina, King of the West Saxons, and anciently paid in England on the first of August. It was likewise called *romefeah*, *romescot*, and *heorthpening*. *Selden's Hist. Tithes*, 217.

ALMUTUM, a cap made of goats' or lambs' skin, the part covering the head being square, and the other part hanging behind to cover the neck and shoulders; worn by priests. *Monast.*, tom 3, p. 36.

ALNAGE [*anne*, or *alne*, Fr., an ell], a measure, particularly the measuring with an ell. *Cowel*.

ALNAGER, or **AULNAGER**, formerly a public sworn officer of the king, who examined into the assize of cloth, and fixed seals to it, and also to collect a subsidiary or *aulnage* duty on all cloths sold, 25 Edw. III., st. 4, c. 1. There were afterwards three officers belonging to the regulation of clothing, viz., searcher, measurer, and aulnager. 4 Inst. 31. Alnage duties were abolished in England by 11 & 12 Wm. III., c. 20, and in Ireland by 57 Geo. III., c. 109.

DE ALNET, D'Auney.

ALNETUM, a place where alders grow, or a grove of alder trees. *Domesday Book*.

ALODIUM, see **ALLODIAL**.

ALOVERIUM, a purse. *Fleta, lib. 2, c. 82, par. 2*.

ALTA PRODITIO, high treason.

DE ALTA ripa, Dantry.

ALTARAGE, offering made upon the altar, and the profit arising to the priest by reason of the altar. *Termes de Ley, 39*.

ALTERATION, changing. When witnesses are examined upon exhibits, &c., they (the exhibits) ought to remain in the place where the examination took place, and not to be taken back into private hands, by whom they may be altered. *Hob. 254*.

Alternativa petitio non est audienda. 5 Co. 40.—(An alternative petition is not to be heard.)

ALTO ET BASSO, an absolute submission of all differences. *Blount*.

AMABYR, or **AMOABYR**, a custom in the honour of Clun, belonging to the Earls of Arundel. *Pretium virginitatis domino solvendum*. Abolished. *Cowel*.

AMBACTUS, a servant or client. *Cowel*.

AMBASSADOR [*Legatus*, Lat.], a person sent by one sovereign power to another, with authority by letters of credence, to treat on affairs of state. Ambassadors are either *ordinary*, who reside in the place whither they are sent, the protection of commerce being their greatest care; or, *extraordinary*, who are employed upon some special matter, as condolences, congratulations, or overtures of marriage, &c. The person of an ambassador is protected from civil arrest by *7 Anne, c. 8*. Consult *Bac. Abr.*, "*Ambassador*," or *Com. Dig.*

AMBER, or **AMBRA**, a measure of four bushels. *Intro. Domesd. vol. 1, p. 133*.

AMBIDEXTER, one who plays on both sides. A juror or embraceror, who takes bribes from both parties to influence his verdict. *Termes de Ley, 38*.

Ambigua responsio contra proferentem est accipienda. 10 Co. 59.—(An ambiguous answer is to be taken against him who offers it.)

Ambiguis casibus semper præsumitur pro rege.—(In doubtful cases the presumption is always in favour of the King.)

Ambiguum placitum interpretari debet contra proferentem. Co. Litt. 303 b.—(An ambiguous plea is to be interpreted against the party delivering it.)

Ambiguitas verborum latens, verificatione suppletur; nam quod ex facto oritur ambiguum verificatione facti tollitur. Bacon.—(An hidden ambiguity of the words is supplied by the verification, for whatever ambiguity arises concerning the deed itself is removed by the verification of the deed.)

AMBIGUITY, doubtfulness, double-meaning, obscurity. There are two species of ambiguity, viz., that which is apparent on the face of an instrument, and which cannot be rendered certain, by the evidence of collateral facts and surrounding circumstances, admissible under the rules of construction, and

which is called *ambiguitas patens*; and that which, although apparently certain, and without ambiguity, for anything that appears upon the face of the deed or instrument, is rendered ambiguous by extrinsic and collateral matter out of the deed, which is called *ambiguitas latens*. The former ambiguity cannot be explained by parol evidence, because the law will not couple and mingle matter of specialty, which is of the higher account, with matter of averment, which is of inferior account in law; but the latter can be explained by the actions of the parties previous to and contemporaneous with the contract. Ambiguity of language is, however, to be distinguished from unintelligibility and inaccuracy, for words cannot be said to be ambiguous, unless their signification seem doubtful and uncertain to persons of competent skill and knowledge to understand them. *Story on Contracts, 272*; *Phillips on Evidence*.

Pleadings must not be ambiguous or doubtful in meaning, and when two different meanings present themselves, that construction shall be adopted, which is most unfavourable to the party pleading. A pleading, however, is not objectionable as ambiguous or obscure, if it be certain and clear to a common intent, that is, if it be clear enough according to reasonable intendment or construction, though not worded with absolute precision. Ambiguity is ground for demurrer, but it is in general cured by verdict or by pleading over. *Stephens' Pleading, 415—422*.

AMBOGLANNA, Ambleside in Westmoreland, and Burdoswold in Cumberland.

AMBROSII BURGUS, Amesbury in Wilts.

AMBRÿ, a place where the arms, plate, vessels, and everything belonging to house-keeping were kept. *Cowel*.

AMENABLE, tractable, that may be led or governed, applied to a wife who is governable by her husband. Also responsible or subject to answer, &c., in a court of justice. *Ibid*.

AMENDMENT, a correction of any errors in actions, suits, or prosecutions, which power has been much extended, but not so as to prejudice any party. (Consult *Chitty's Archbold, tit. "Amendment."*)

A MENSA ET THORO (from table and bed). It is a partial divorce, when the marriage is just and lawful, *ab initio* (from the beginning), but for some supervenient cause it becomes improper or impossible for the parties to live together, as in the case of intolerable cruelty in the husband, or adultery in either of them. This divorce is effected by sentence of the Ecclesiastical Court. It causes the separation of the husband and wife only, but does not annul the marriage, so that neither of them can marry during the life of the other. *Stephen's Com., vol. 2, p. 311*.

AMERCEMENT, the pecuniary punishment of an offender, a penalty assessed by the peers or equals of the party amerced for an offence

done, for which he places himself at the mercy of the lord. The difference between *amercements* and *aines* is as follows:—the latter are certain, and were created by some statute, they can only be imposed and assessed by courts of record; the former are arbitrarily imposed by courts not of record, a court leet for instance. *Termes de Ley*, 40.

AMHINIOGAU TIR (land borderers). Witnesses in a court for landed property, whose lands bordered on that in dispute. *Ant. Inst. Wales*.

AMITIA, a cap made with goats' or lambs' skins. See **ALMUTUM**.

AMICTUS, or **AMESSE**, the uppermost of the six garments worn by priests, tied round the neck and covering the breast and heart. The other five garments are alba, cingulum, stola, manipulus, and planeta. *Cowel*.

AMICUS CURIÆ (friend to the court). A stander by, who may inform the court when doubtful, or mistaken. *2 Co. Litt.* 178.

AMITTERE LEGEM TERRÆ, or **LIBERAM LEGEM**. To lose and be deprived of the liberty of swearing in any court. But by the recent statute, 6 & 7 Vict. c. 85, witnesses are not excluded from giving evidence by incapacity from crime or interest, their credibility being left to the jury. A person outlawed is said to lose his law; i. e., put without its protection, so that he cannot sue, although he may be sued. *Glanvil*, lib. 2.

AMMOBRAGIUM, a service, or poll money, like chevage. *Spel.*

AMMODWR [*am-bod-wr*], a compactor, one before whom a compact is made and so admissible as a witness to prove the terms of it. *Ant. Inst. Wales*.

AMNESTY [*ἀμνηστία*], an act of pardon or oblivion, by which crimes against the government to a certain time are so obliterated that they can never be brought into charge.

AMNIUM INSULÆ. Isles upon the west coast of Britain. *Blount*.

AMOBH [*am-gobr*, fee]. The fee paid to a lord by the person subject to that payment on the marriage of a female. *Ant. Inst. Wales*.

AMORTIZATION, or **AMORTIZEMENT**, an alienation of lands in mortmain to any corporation or fraternity and their successors, i. e., to some community that never is to cease. *Encyc. Lond.*

AMORTIZE, to alienate lands in mortmain, which cannot be done without licence from the Crown. *Ibid.*

AMOTION, a putting away, a removing. *Scott*.

AMOVE, to remove from a post or station.

AMOVEAS MANUS, or **OUSTER LE MAIN**, a livery of land to be amoved out of the king's hands on a judgment obtained upon a *monstrans de droit*, to restore the land, it being as much as if the judgment were given that the party should have his land again. Abolished by 12 Car. II., c. 24.

AMPLIATION, an enlargement, a referring of judgment till the cause be further examined. *Cowel*.

AMRYGOLL [*am-rhy-coll*, total loss]. Loss of property. *Ant. Inst. Wales*.

AMY or **AMI** [*Amicus*, Lat.], usually called *prochein amy*, the next friend (not the guardian), suing on behalf of an infant or orphan. Infants sue by *prochein amy*, or guardian, and defend by guardian. *Alien amy*, an alien friend, is a foreigner residing here, who is subject to some sovereign who is at peace with us. *Cowel*.

AN, JOUR, ET WASTE, year, day, and waste. A forfeiture of the lands to the Crown incurred by the felony of the tenant, after this time the lands escheat to the lord. *Termes de Ley*, 40.

ANACOEENOSIS, a rhetorical figure, whereby we seem to deliberate and argue the case with others upon any matter of moment. *Encyc. Lond.*

ANACOLUTHON, or **ANACOLUTHUS** (*a* priv., and *καλουθος*, consequent, i. e., an inconsequence in a discourse). A rhetorical figure, when a word that is to answer another is not expressed. *Ib.*

ANACRISIS [enquiry], among civilians, was an investigation of truth, interrogation of witnesses, and enquiry made into any fact, especially by torture. *Ib.*

ANALOGISM, an argument from the cause to the effect.

ANANCEION, a rhetorical figure to prove the necessity of anything.

ANATHEMATIZE, to pronounce accursed by ecclesiastical authority, to excommunicate. *Encyc. Lond.*

ANATOCISM (*ἀνά* and *τόκος*, Gk., usury), taking usurious interest for the loan of money, when compound interest is extorted, or the interest of several years are added together as principal, upon which interest is required. Interest upon interest. This is the worst kind of usury, and has been severely condemned by the Roman law, as well as by the common law of most other nations.

ANCESTOR, one that has gone before in a family; it differs from predecessor, in that it is applied to a natural person, and his progenitors, while the latter is applied to a corporation, and those who have held offices before those who now fill them. *Co. Litt.* 78 b.

ANCESTREL, that which has relation to ancestors. *Blount*.

ANCHOR, a measure containing ten gallons. *Lex Mercatoria*.

ANCHORAGE, a duty taken of ships for the use of the haven where they cast anchor. *MS. Arth. Trevor Ann.*

ANCIENT DEMESNE, a tenure existing in certain manors, which, though now perhaps granted to private persons, were actually in the possession of the Crown in the times of Edward the Confessor and William the Conqueror, and so appear to have been by the great survey in the Exchequer called Domesday Book, and, therefore, whether lands are ancient demesne or not, is to be tried only by this book, called in conse-

quence *Liber Judicatorius* ; but to ascertain whether lands be parcel of a manor, which is ancient demesne, a jury must try it, being a question of fact. It is a species of copyhold, differing, however, from common copyholds in certain privileges, but yet must be conveyed by surrender, according to the custom of the manor. There are three sorts, 1, where the lands are held freely by the king's grant ; 2, customary freeholds, which are held of a manor in ancient demesne, but not at the lord's will, although they are conveyed by surrender, or deed and admittance ; 3, lands held by copy of court-roll at the lord's will, denominated copyholds of base tenure. Consult *Watkins* or *Scriven* on "*Copyholds*."

ANCIENTS, gentlemen of the Inns of Court and Chancery. In Gray's Inn the society consists of benchers, ancients, barristers, and students under the bar ; and here the ancients are of the oldest barristers. In the Middle Temple, those who have passed their readings, are termed ancients. The Inns of Chancery consist of ancients and students, or clerks ; from the ancients, a principal or treasurer is chosen yearly.

ANCIENTY, eldership or seniority.

ANCILLARY, that which depends on or is subordinate to, some other decision. *Encyc. Lond.*

ANCWYN, a stated allowance of provision allotted to the officers of the court in their lodgings ; the term appears to be put in opposition to *cwynos* (*cæna*) supper, as being a privileged *private* allowance for that meal ; the *cwynos* being the *public* evening meal. *Ancwyn* is translated *cæna* in some Latin copies of the ancient Welch laws. *Ant. Inst. Wales.*

ANDAGA, or **ANDÆG**, a day or term appointed for hearing a cause, hence *Andagian*, to appoint the day. *Ant. Inst. England.*

ANDENA, a swath or line of grass or corn in mowing, or as much ground as a man can stride over at once. *Jacob.*

ANDERIDA, Newenden, in Kent.

ANDREAPOITS, St. Andrew's in Scotland.

ANDROCOETESIS [*ἀνδρ.*, Gk., man, and *κοίτῃς*, to cohabit with]. The infamous act of sodomy.

ANELACIUS, a short knife or dagger. *Mat. Paris*, 277.

ANFELD'TYHDE, or **ANFEALTIHLE**, a simple accusation. *Saxon.*

ANGARIA, personal service, which tenants were obliged to pay to their lords. Impress- ing of ships. *Blount.*

ANGELICA VESTIS, a monkish garment which laymen put on a little before death, in order to have the benefit of the monks' prayers. *Monast. l. tom.* 632.

ANGEL, an ancient English coin of the value of ten shillings. *Jacob.*

ANGHYVARCH [*an*, *cyvarch*, unquestion- able]. A term used for the articles which were exclusively the property of a man or woman, and not subject to division upon a separation ensuing. Generally a fine for

committing various actions without permis- sion. *Ant. Inst. Wales.*

ANGIDLLARIANUM MONASTERIUM, the city of Ely in Cambridgeshire. It is the only city in England not represented in Parliament.

ANGILD [*an*, one, and *gild*, payment, mulct, or fine, Sax.]. The single valuation or com- pensation of a criminal. *Twigild* was the double, and *trigild* the treble mulct or fine. *Laws of Ina*, c. 20.

Angliæ jura in omni casu libertatis dant favo- rem. Fortesc. c. 42.—(The laws of England in every case of liberty are favourable.)

ANGYLDE, the rate fixed by law, at which certain injuries to person or property were to be paid for ; in injuries to the person, it seems to be equivalent to the "*wer*," i. e., the price at which every man was valued. It seems also to be the fixed price at which cattle and other goods were received as cur- rency, and appears to have been much higher than the market price, or *ceap-gild*. *Ant. Inst. England.*

ANHLOTE, a single tribute or tax, paid ac- cording to the custom of the country, as scot and lot. *Leges, Wm. I.*, c. 64.

ANICHELED, annulled, cancelled or made void. *Blount.*

ANIENS, or **ANIENT**, void, of no force or effect. *F. N. B.* 214.

Animalia fera, si facta sint mansueta, et ex con- suetudine eunt et redeunt, volant et revolant ut cervi, cygni, &c., eo usque nostra sunt, et ita intelliguntur, quamdiu habuerunt animam revertendi. 7 Co. 16.—(Wild animals if they be made tame, and accustomed to go out, return, fly away and fly back, as stags, swans, &c., are so far our property, and con- sidered to belong to us, as they have the in- tention of returning to us.)

ANIMALS, distinguished, legally, into *domitæ*, or tame animals, and *feræ naturæ*, or wild animals. *Stephen's Com.*, vol. 2, p. 67.

Animus hominis est anima scripti. 3 Bulst. 67. —(The intention of a man is the intention of his writing.)

ANN, or **ANNAT**, half year's stipend, over and above what is owing for the incumbency, due to a minister's relict, child, or nearest of kin after his decease. *Scotch Law.*

ANNALES, yearlings or young cattle from one to two years old. *Cowel.*

ANNATS, or **ANNATES**, first fruits. *Termes de Ley*, 40.

ANNEALING OF TILE [*Onælan*, Sax., *ac- cendere*, Lat.], burning or hardening tiles, which are made of burnt clay, used for co- vering houses. 17 Edwd. IV., c. 4.

ANNEXATION, uniting lands to the Crown and declaring them inalienable. Also the appropriating of church lands by the Crown, and the union of land lying at a distance from the kirk to which they belong, to a kirk to which they are contiguous. *Scotch Law.*

ANNIENTED, abrogated, frustrated, or brought to nothing. *Litt. c.* 3, s. 741.

ANNIVERSARY DAYS, solemn days appointed to be celebrated yearly in commemoration of the death or martyrdom of saints; or the days, whereon, on the return of every year, men were wont to pray for the souls of dead friends, according to the custom of the Roman Catholics, mentioned in the statute of 1 *Edw. VI.*, c. 14. *Lib. Rames.*, s. 134. It is a day annually observed at our two Universities, &c., in gratitude to their founders and benefactors. It was anciently called *year-day* or *mind day*. *Jacob.*

ANNI-NUBILES, the marriageable age of woman. 2 *Co. Litt.* 434.

ANNO DOMINI (abbreviated A.D.) The Christian computation of time, from the incarnation of Jesus Christ, which is generally inserted in the dates of public writings, and private assurances, together with the year of the sovereign's reign, but both are not necessary. It is called the "Vulgar Æra." Scaliger, a high authority in chronology, classes the Nativity of the Saviour among the mysteries that will never be discovered. Greswell advances as a conjecture, that the day of the Nativity is that on which the Paschal Lamb was set apart preparatory to the sacrifices, that is on the tenth of Nisan, answering to the fifth April, in the year of Rome, 750, four years before the vulgar æra. The Romans began their æra from the building of Rome, 753 B. C.; the Greeks computed time by Olympiads, first observed by the Idæi Dactyli, B. C. 1453. *Lempriere; Macbride's Diatessaron.*

ANNOISANCE, or **ANNOYANCE**, any hurt done to a place, public or private, by placing anything thereon that may breed infection, or by encroachment, or such like means. It is the same as *noisance* or *nuisance*. 22 *Hen. VIII.*, c. 5.

ANNUA PENSIONE, an ancient writ to provide the King's chaplain, unpreferred, with a pension. *Reg. Orig.* 165, 307.

ANNUALE, the yearly rent or income of a prebendary. *Cowel.*

ANNUALIA, a yearly stipend assigned to a priest for celebrating an anniversary, or for saying continued masses for the soul of a deceased person. *Blount.*

ANNUITY, a yearly payment of a certain sum of money, granted to a person for life, for years, or in fee, chargeable upon the person of the grantor; it, therefore, differs from a rent-charge, which is charged upon the land. *Doctor and Student, Dial.* 1, c. 3; *Stephen's Com.*, vol. 2, p. 26. By 53 *Geo. III.*, c. 141, repealing the 17 *Geo. III.*, c. 26, and itself amended by the 3 *Geo. IV.*, c. 92, and 7 *Geo. IV.*, c. 75, it is directed, that upon the sale of any annuity or rent-charge granted for one or more life or lives, or for any term of years or greater estate, determinable on one or more life or lives, a memorial of the date and nature of the security, the names of the parties, *cestui que trusts*, *cestui que vies*, and witnesses, the consideration money and the manner in which it was paid, and the amount of such annuity or rent charge, shall, within

thirty days after its execution, be enrolled in the Court of Chancery, otherwise the security shall be null and void; and that in case of collusive practices respecting the consideration, the Court in which any action is brought or judgment obtained upon such collusive security, may order the same to be cancelled, and the judgment (if any) to be vacated, and also that all contracts for the purchase of annuities from infants shall remain utterly void and be incapable of confirmation, after such infants attain their majority. These acts do not extend to any annuity or rent-charge given by will, or by marriage settlement, or for the advancement of a child, nor to any annuity or rent-charge secured upon freehold, copyhold, or customary lands in Great Britain or Ireland, or in her Majesty's possessions beyond the seas, or by actual transfer of stock in the public funds, nor to any voluntary annuity or rent-charge granted without regard to pecuniary consideration or money's worth, nor to any annuity or rent-charge granted by any body corporate or under any authority or trust created by act of Parliament. It is the duty of the grantee to enrol a memorial of the annuity, for the full particulars of which consult *Sugden's Vends. and Purc.* vol. 3, p. 350, *et. seq.*

ANNUITIES OF TEINDS, i. e., tithes, are 10s. out of the boll of teind wheat, 8s. out of the boll of beer, less out of the boll of rye, oats, and peas, allowed to the Crown yearly out of the tiends not paid to bishops or set apart for other pious uses. *Scotch Law.*

ANNULUM ET BACULUM, a ring and pastoral staff or crosier, the delivery of which by the prince, was the ancient mode of granting investitures or bishoprics. 1 *Bl. Com.* 377.

ANNUM LUCTUS, the year of mourning, during which the widow, by the ordinances of the civil law, could not marry, to prevent the inconvenience of a widow bearing a child, which, by the period of gestation, may be the child either of her deceased or her present husband. *Cod.* 5, 9, 2.

ANNUS DELIBERANDI, the year allowed by the Scottish law for the heir to deliberate whether he will enter upon his ancestor's lands, and represent him. Entry has very serious effects, and, therefore, this time is given for consideration; it commences at the ancestor's death, unless in the case of a posthumous heir, and then from his birth. *Scotch Law.*

ANOMY [*a priv.*, and νόμος, Gk., law], breach of law.

A non posse ad non esse sequitur argumentum necessarie negativè, licet non affirmativè. Hob. 336.—(If a thing be not possible, an argument in the negative may be deduced, namely, that it has no existence; but an argument in the affirmative cannot be deduced, namely, that if a thing is possible, it is in existence.)

ANRHAITH [*an-rhaith*, lawless], spoil. *Ant. Inst. Wales.*

ANRHAITH-ODDEV, spoliation, sufferance.

A term used when a person's goods were confiscated and seized by the lord. *Ibid.*

ANRHAITH-GRIBDDAIL, pilfering, spoliation. A term for the graver spoliation to be exercised towards a homicide. *Ibid.*

ANSEL, or **ANSUL**, an ancient manner of weighing by hanging scales or hooks at either end of a beam or staff, which being lifted by the middle, discovered the equality or difference between the weight at one end and the thing weighed at the other. *Termes de Ley*, 66.

ANSWER IN CHANCERY. It is a defence upon the merits, and generally controverts the allegations stated in the plaintiff's bill, or some of them, and states facts showing the defendant's rights in the subject of the suit. It sometimes admits the truth of the case made out by the bill, and either with or without stating additional facts, submits the questions, arising upon the case thus made, to the judgment of the Court. If the answer do not state any new facts, or such only as the plaintiff is willing to admit, no further pleading is necessary, but the cause may be set down on bill and answer. If, on the contrary, the plaintiff deny the truth of the answer, he files a replication, which puts the cause at issue. The answer, where relief is sought, properly consists of two parts, performing, in fact, a double office, first, the defendant's defence to the case as disclosed in the bill, and second, the defendant's examination on oath, as to the facts charged against him, of which a discovery is sought by numbered interrogatories. It combines two proceedings, which are separated in the practice of the Ecclesiastical, though not always in the Admiralty Courts. Where there are several defendants, each is entitled, if he like (subject to an ultimate question as to costs, if the proceeding be oppressive), to put in a separate answer, although they have a common defence. The form of the answer is borrowed from the civil law, it is filed with the Clerk of Records and Writs, signed by the defendant upon oath, except in the case of peers, who wage their honour, Quakers, who solemnly affirm, and corporations, who only set their seal to it. It is taken, in town, before a Master Ordinary, or a Clerk of Records and Writs, and, in the country, before commissioners, duly appointed. Counsel signs the answers in town cases, but not in country cases, the commissioners being responsible for the propriety of its contents, at it is supposed to be taken by them from the mouth of the defendant, as, indeed, was formerly the practice. The defendant's oath and signature may be dispensed with, by an order of the Court obtained upon the plaintiff's consent thereto. Consult *Mitf. Eq. Pl. by Jeremy*, 15, 16; *Cooper Eq. Pl.* 325, 326; *Story's Com. on Equity Pleadings*, ch. 13; *Smith's Practice*, and *Daniel's Practice*, title "Answer."

ANTAGOGE, a figure in rhetoric, by which, when the accusation of the adversary is un-

answerable, we load him with the same or other crimes. *Encyc. Lond.*

ANTANACLASIS [Lat., from *ἀντανάκλασις*, Gk., to repurcuss], a figure in rhetoric, when the same word is repeated in a different, if not in a contrary signification; as, *In thy youth learn some craft, that in old age thou mayest get thy living without craft*. It is also a returning to the matter at the end of a long parenthesis, as, *Shall that heart (which does not only feel them, but hath all motion of his life placed in them), shall that heart, I say, &c.* *Ibid.*

ANTANAGOGE [from *ἀντι*, against, *ἀντίγω*, Gk., to take up]. In rhetoric, a reply to an accusation by way of recrimination. *Ibid.*

ANTEJURAMENTUM, or **PRÆJURAMENTUM**, an oath taken by the accuser and accused before any trial or purgation. The accuser swore that he would prosecute, and the accused was to swear on the day of ordeal that he was innocent. *Leg. Athelstan apud Lambard*, 23.

ANTHORISMUS. In rhetoric, denotes a contrary description or definition of a thing from that given by the adverse party. Thus, if the plaintiff urge, that to take anything away from another without his knowledge or consent is a theft, this is called *ἄποσις*, or definition. If the defendant reply, that to take a thing away from another without his knowledge or consent, provided it be done with design to return it to him again, is not theft, this is an *ἀνθोरισμὸς*. *Ibid.*

ANTICHRESIS, in the civil law, a covenant or convention, whereby a person borrowing money of another engages or makes over his lands or goods to the creditor, with the use and occupation thereof, for the interest of the money lent. This covenant was allowed of by the Romans, among whom usury was prohibited; it was afterwards called *Mortgage*, to distinguish it from a simple engagement, where the fruits of the ground were not alienated, which was called *Viv-gage*, i. e., *vivum vadium*. *Encyc. Lond.*

ANTIENT DEMESNE. See *Ancient Demesne*.

ANTINOMY [*ἀντι*, against, and *νόμος*, Gk. law]. A contradiction between two laws or two articles of the same law. *Encyc. Lond.*

ANTIPELARGIA, an ancient and righteous law, whereby children were obliged to furnish necessaries to their aged parents. The *ciconia*, or stork is a bird famous for the care it takes of its parents, when grown old. Hence, in some Latin writers, this is rendered *lex ciconiaria*, or the stork's law. *Encyc. Lond.*

ANTISTITIUM, a monastery. *Blount*.

ANTITHELARIUS, the recriminating upon the accuser of the same crime, which he has charged against the accused. *Canutus*, c. 47.

ANTIVESTÆUM, the Land's End, in Cornwall.

ANTONA, the river Avon, in Warwickshire.

APATISARIO, an agreement or compact. *Upton*, lib. 2, c. 12.

APIACUM, Pap Castle, in Cumberland.

Apices juris non sunt jura. Co. Litt. 304.— (Points of law are not laws.) The ingenuity of special pleaders would frequently sacrifice the spirit of our laws upon the altar of technicality, were it not for this maxim, which prevents subtle exceptions diverting the stream of justice. The Courts frequently regret the occurrences of technical objections to the pleadings, depriving parties of their just and moral rights, but, perhaps, upon the whole, it would be a subject of deeper regret, if, in order that supposed justice should be done, a remedy be applied to a particular hardship, unsettling the established rules of pleading, and introducing laxity and uncertainty. *Galloway v. Jackson*, 3 Scott, N. P. 773.

APORIARE, to bring to poverty, to shun or avoid. *Wals. in R.* 2.

APOSTACY, a total renunciation of Christianity, by embracing a false religion, or no religion at all. 4 Bl. Com. 43.

APOSTARE, to violate, break, or transgress. *Blount; Leg. Etho. Conf. c.* 35.

APOSTATA CAPIENDO, a writ formerly issued against an apostate, or one who had violated the rules of his religious order. It was addressed to the sheriff to deliver the defendant into the possession of the abbot or prior. *Reg. Orig.* 71, 267.

APOTHECARIES, persons who prepare medicines. Their practice in England and Wales is regulated by 55 Geo. III., c. 194.

APPARATOR, or **APPARITOR**, a messenger, who cites and arrests offenders, and executes the decrees of the judges of the Spiritual Courts. *Cowel.*

APPARATOR COMITATUS, an officer formerly so called, for whom the sheriffs of Buckinghamshire had a considerable yearly allowance. *Hales' Sher. Acco.* 104.

APPARENT HEIR, or **APPEARAND HEIR**, the eldest son of a person, possessed of property, to whom it will descend, if he outlive his parent dying intestate. In the *Scotch Law*, he is the person to whom the succession has actually opened, and who so remains until his regular entry on the lands by service or infestment on a precept of *dare constat*. *Scotch Dict.*

APPARLEMENT [*pareillement*, Fr., in like manner], a resemblance or likelihood. 2 Ric. II. st. 1, c. 6.

APPARURA, furniture and implements. *Blount.*

APPEAL, the removal of a cause from an inferior to a superior court. 3 Bl. Com. 55.—Criminally, it was an accusation by a private subject against another for some heinous crime, demanding punishment on account of the particular injury suffered, rather than for the offence against the public. Criminal appeals were either capital or not capital: capital were subdivided into 1. appeals of death or murder; 2. appeals of larceny or robbery; 3. appeals of rape; 4. appeals of arson, which are all obsolete and superseded by 59 Geo. III., c. 46; not capital were

de pace, de plagis, de imprisonment, and mayhem, superseded by actions of trespass. *Leach's Hawk. P. C.* ii. 285. Consult *Kendall's Arguments on Trial by Battel.*

APPEAL TO ROME, abolished by 24 Hen. VIII., c. 12, and 25 Hen. VIII., c. 19, 21.

APPEARANCE. When a person is served with a summoning process from a Court he generally comes into such Court to defend himself, which is done, in the Courts of Law and Equity, at Westminster, by entering an appearance with the proper officer. If he do not appear within the time allowed, which is eight days after service of writ of summons at common law, and also eight days after service of a *subpœna* to appear and answer in equity, the plaintiff may enter an appearance for him at common law by filing an affidavit of the service of the writ, which is called an appearance *sec. stat.* (i. e., *secundum statuti auctoritatem*, according to the authority of the stat.), 12 Geo. I. c. 29, and see 5 Geo. II. c. 27. This appearance must be entered within four terms next after service of writ. *Cook v. Allen*, 3 Tyr. 378. And in equity, the plaintiff may, provided such non-appearing defendant be not an infant or a person of weak or unsound mind, after the expiration of eight days and within three weeks from the time of service of the *subpœna* apply to the record and writ clerk to enter an appearance for such defendant; and, no appearance having been entered, the record and writ clerk is to enter such appearance accordingly, upon being satisfied by affidavit that the *subpœna* was duly served upon such defendant personally, or at his dwelling-house or usual place of abode; and, after the expiration of such three weeks, or after the time allowed to such defendant for appearing has expired, in any case in which the record and writ clerk is not hereby required to enter such appearance, the plaintiff may apply to the Court for leave to enter such appearance for such defendant; and the Court being satisfied that the *subpœna* was duly served, and that no appearance has been entered for such defendants, may, if it so think fit, order the same accordingly. *Ord. 29, of 8th May, 1845.*

There are several modes for a defendant to appear:—

1. in person.
2. by attorney.
3. by guardian.
4. by committee.

In capital criminal offences, the accused must always appear and plead in person, and likewise in appeal or on attachment, but in offences under the degree of capital, an appearance may, by favour of the Court, be entered by attorney. 2 Hawk. P. C., c. 22, s. 1; *Cro. Jac.* 462.

APPELLANT, the party appealing; the party resisting the appeal is called *Respondent*. *Encyc. Lond.*

APPELLATE, appealed against. *Ibid.* *Appellatione fundi, omne ædificium et omnis ager*

continetur. 4 Co. 87.—(The word "*fundus*" includes every building and portion of ground.)

APPELLEE, one who is appealed against or accused. *Encyc. Lond.*

APPELLOR, a criminal who accuses his accomplices, one who challenges a jury, &c. *Ibid.*

APPENDANT, a thing of inheritance belonging to another inheritance which is more worthy: as an advowson, common, &c., which may be appendant to a manor, common of fishing to a freehold, a seat in a church to a house, &c. It differs from appurtenance, in that appendant must ever be by prescription, i. e., a personal usage for a considerable time, while an appurtenance may be created at this day, for if a grant be made to a man and his heirs, common in such a moor for his beasts levant or couching upon his manor, the commons are appurtenant to the manor and the grant will pass them. *Co. Litt.* 121 b.

APPENDITIA, pertinences of an estate. *Blount.*

APPENNAGE, or **APENNAGE**, a child's part or portion, and is properly the portion of the King's younger children in France, where by a fundamental law, called the law of appennages, the King's younger sons have duchies, counties, or baronies granted to them and their heirs, &c.; the reversion being reserved to the Crown, and all matters of regality as to coinage and levying taxes in such territories. *Spelm.; Cowel.*

APPENSURA, the payment of money at the scale or by weight. *Spelm.*

Applicatio est vita regulæ. 2 Buls. 79.—(Application is the life of a rule.)

APPODIARE, to lean on or prop up anything. *Wals.* 1271; *Mat. Paris Chron.*

APPOINTMENT, a common law deed or conveyance of a derivative nature relating to or dependant on some precedent assurance, in which a power to appoint to certain uses has been created or preserved to the party thereby granting or appointing. *Co. Litt.* 80. There is a distinction between an appointment and declaration of a use, the latter is that original disposition of the use by the express consent of the parties, which prevents it from following any implied designation, which the rules of law might otherwise prescribe, but an appointment is the limitation of the use by a separate instrument derived from and conformable to a power reserved or contained in the original conveyance, by which the seisin to serve those uses is transferred. The limitation of uses thus made under the power must necessarily alter, abridge, or suspend the use previously declared upon such original conveyance. Such are the powers usually reserved in settlements of leasings, jointuring, selling, exchanging and charging. *Sander's Uses and Trusts*, vol. 2, p. 87.

APPONERE, to pledge or pawn. *Neubrig*, l. 1, c. 2.

APPORTIONMENT, a division or partition of rent, commons, &c., between two or more

persons. As to the apportionment of rents, the 11 Geo. II., c. 19, s. 15, enacts "that if any tenant for life shall happen to die before, or on the day on which any rent was reserved or made payable upon any demise or lease of any lands, tenements, or hereditaments, which determined on the death of any such tenant for life, that the executors or administrators of such tenant for life, shall and may, in an action on the case, recover of and from such under-tenant or tenants of such lands, tenements, or hereditaments, if such tenant for life die on the day on which the same was made payable, the whole, or if before such day, then a proportion of such rent according to the time such tenant for life lived of the last year or quarter of a year, or other time in which the said rent was growing due as aforesaid, making all just allowances, or a proportionable part thereof respectively." This statute has been extended in equity to tenants in tail. And Lord Hardwicke thought the act extended to a tenancy for 99 years, determinable on lives; to a tenant in tail after possibility of issue extinct, and to an estate-tail in a woman *ex provisione viri*. *Ambl.* 198; *Paget v. Lee*, MS. The 4 & 5 Wm. IV., c. 22, extends the law of apportioning rent to *all* rents, charges, annuities, and payments, made at fixed periods.

APPORTUM, the revenue or profit which a thing brings to the owner, and commonly used for a corody or pension. *Blount.*

APPOSAL OF SHERIFFS, charging them with money received upon their accounts in the Exchequer, 22 & 23 Car. II., c. 22.

APPRAISERS, persons sworn to make a true value of goods and furniture, and are compelled to take them at their own appraisement, if valued too high. 11 Edw. I. Stat. *Acton Burnel*.

APPRAISEMENT, the act of valuing goods and furniture, &c.

APPREHENDING OFFENDERS, persons active in so doing are allowed compensation in certain cases specified in 7 Geo. IV., c. 64, s. 28.

APPRENDRE, a fee or profit. *Cowel.*

APPRENTICE, a person bound by indentures to a tradesman or artificer, who covenants to teach him his trade or mystery. Consult *Bird* or *Chitty on the Laws of Apprentices*, &c.

APPROBATE, or **REPROBATE**, a person who takes advantage of one part of a deed and rejects the rest. *Scotch Law.*

APPROPRIATION, the annexing of some ecclesiastical benefice to the proper and perpetual use of some religious house, &c., just as *impropriation* is the annexing a benefice to the use of a lay person or corporation. Appropriation may be severed and the church become disappropriate, if a patron or appropriator present a clerk, who is properly instituted and inducted, for he would then become complete parson; also, if a corporation, possessing the benefice, is dissolved, the parsonage becomes disappropriate at common

law. 2 *Burn's Eccle. Law*, 347; *Haggard's Rep. Eccles. Courts*, 162.

APPROPRIARE COMMUNIAM, to discommon and enclose any parcel of land which was before open common. *Paroch. Antiq.* 336.

APPROPRIETARY, a lay possessor of the profits of a benefice.

APPROVE, to augment a thing to the utmost. 2 *Inst.* 474.

APPROVEMENT, i. e., improvement. Profits of land; also, where a person has a right of common on the lord's waste, and the lord encloses part of the waste, leaving sufficient common. *Crompt. Juris.* 152; *Reg. Jud.* 8, 9.

APPROVER, or **PROVER**, a criminal offender, who accuses others to be guilty of the same offence, and is admitted as a witness at the discretion of the Court to give evidence against his companions in guilt. It is vulgarly called "King's evidence." A criminal who has pleaded "not guilty" cannot be such witness. This testimony must necessarily be of an unsatisfactory nature, as the approver's hopes of lenity and pardon must materially depend upon the conviction of his confederates. It is, therefore, seldom used without offering confirmatory evidence, unless in misdemeanours, when a conviction may ensue upon the uncorroborated evidence of an accomplice. If an accomplice act fairly and openly, and discover the whole truth, although he is not entitled of right to a pardon, yet the usage and practice and lenity of the Court, is to stop the prosecution against him, and he has an equitable title to a recommendation to the royal mercy, which holds out a hope that accomplices so conducting themselves and bringing others to justice, shall themselves escape punishment and be pardoned. *Cowp.* 33. But this course of admitting approvers has been long disused, for the truth is, as Sir Matthew Hale observes, that more mischiefs have arisen to good men by these kind of approvements upon false and malicious accusations of desperate villains, than benefit to the public by the discovery and conviction of real offenders. 2 *Hale, P. C.*, c. 29; 4 *Bl. Com.* 330. The practice now is to admit accomplices to give evidence for the Crown, under an implied promise of pardon, on condition of their making a full and fair confession of the whole truth.

APPROVERS, bailiffs of lords in their franchises. Sheriffs are called the King's approvers in 1 *Edw. III.*, c. 8. *Termes de Ley.* 49.

APPRUARE, to take to one's use or profit. *Wm. II.*, c. 20. *Cowel.*

APPRYSING, when, by letters, a debtor is charged to appear before a messenger (who, in that case, represents the sheriff), to hear the land specified in the letter *apprysed* by inquest and declared to belong to the creditor for payment of his debts. *Scotch Law.*

APPURTENANCES, belonging to, as hamlets to a manor, and common of pasture, tithary, &c., liberties and services, out-

houses, yards, orchards and gardens are appurtenant to a messuage, but lands cannot properly be said to be appurtenant to a messuage. *Com. Dig.*, tit. *Appendant and Appurtenant*.

A principalioribus seu dignioribus est inchoandum. *Co. Litt.* 18.—(We are to begin with the most worthy and principal parts.)

A PRIORI. All arguments may be divided according to the relation of the subject-matter of the premises to that of the conclusion, into (a), *a priori* (from the antecedent to the consequence), or those of such a nature that the premises would account for the conclusion, were that conclusion granted; and (b), *a posteriori* (from the consequence to the antecedent), or those whose premises could not have been used to account for the conclusion. The former class is manifestly arguments from cause to effects, since to account for anything signifies to assign the cause of it.—The latter class comprehends all other arguments.

Archbishop Whately (*Rhetoric*, chap. 11. § 2), thus distinguishes these two kinds of arguments:—"The only decisive test by which to distinguish the arguments which belong to the one and to the other of these classes, is, to ask the question, 'Supposing the proposition in question to be admitted, would this statement here used as an argument, serve to account for and explain the truth, or not?' It will then be readily referred to the former or to the latter class, according as the answer is in the affirmative or the negative; as, *e. g.*, if a murder were imputed to any one on the grounds of his 'having a hatred to the deceased, and an interest in his death,' the argument would belong to the former class; because, *supposing* his guilt to be *admitted*, and an enquiry to be made how he came to commit the murder, the circumstances just mentioned would serve to *account* for it, but not so with respect to such an argument as his 'having blood on his clothes,' which would, therefore, be referred to the other class."

DE AQUA FRISCA, Freshwater.

AQUA PONTANUS, Bridgewater, in Somersetshire.

AQUÆ CALIDA, AQUÆ SOLIS, AKE-MAN-CESTER, Bath, in Somersetshire.

AQUÆDON, Ediure, *vulgo* Eatoun.

AQUÆ DUCTUS, two servitudes, one a right to carry a water-course through another's ground, the other to water cattle at a river, well, or pond. *Scotch Law.*

AQUÆDUNENSIS SALTUS, Waterdon.

AQUÆDUNUM, Aieton.

AQUAGE, a watercourse, or toll paid for water carriage. *Blount.*

AQUÆUDENSIS PONS, Eiford.

AQUILÆDUNUM, Hoxton.

AQUITANIA, Aquitain, now containing Guienne and Gascony.

A. R., anno regni, the year of the reign, as *A. R. V. R. 9*; (*Anno regni Victoriae Reginae nono*); in the ninth year of the reign of Queen Victoria.

ARABANT, applied to those who held by the tenure of ploughing and tilling the lord's lands within the manor. *Cowel.*

ARACE, to rase or erase. *Blount.*

ARAHU, to make oath in the church or some other holy place. All oaths were made in the church upon the relics of saints, according to the Ripuarian Laws. *Cowel.*

ARATIA, arable grounds. *Blount.*

ARATRUM TERRÆ, as much land as can be tilled by one plough, and which is done by the tenant as a service for his lord. *Cowel.*

ARBEIA, Ireby, in Cumberland.

ARBITRAMENT, the award or decision of arbitrators upon the matter of dispute, which has been submitted to them. *Termes de Ley*, 50.

ARBITRATION, the submitting of matters in dispute to the judgment of one, two, or more persons called arbitrators. *Whart. Angl. Sacr.* 1, 772.

There are different modes of submitting questions to arbitration:—1. Where there is a cause in court, i. e., where the matter intended to be submitted to arbitration is also the subject of an action pending in one of the Superior Courts at Westminster, the cause may be referred at any time before trial, by Judge's order or rule of court; or, when the cause is called on by order of *Nisi Prius*, with or without a verdict being taken, as the parties shall judge proper. 2. Where there is no cause in Court, matters in difference between parties, which are not the subject of any action pending at the time, may be referred to arbitration in any of the three following ways:—1st, by mutual bonds or other deed or written agreement of submission simply; 2dly, by such bonds, deed, or agreement, containing also the parties' consent that such submission shall be made a rule of Court, in pursuance of 9 & 10 Wm. III., c. 15; and 3dly, by parol agreement, in which case, however, the submission cannot be made a rule of Court, even although the parties consent to it.

Courts of Equity will not enforce the specific performance of an agreement to refer any matters in controversy between adverse parties, deeming it against public policy to exclude from the appropriate judicial tribunals of the state any persons, who, in the ordinary course of things, have a right to sue there. Neither will they, for the same reason, compel arbitrators to make an award; nor when they have made an award, will they compel them to disclose the grounds of their judgment. The latter doctrine stands upon the same ground of public policy as the others, that is to say, in the first instance, not to compel a resort to these domestic tribunals, and, on the other hand, not to disturb their decisions, when made, except upon very cogent reasons.

The Court of Chancery, in regard to its *equitable* jurisdiction is not a Court of Record, but so far as concerns its *Common Law* jurisdiction, it is a Court of Record, and as such, it is apprehended (for there does not

appear to be any decision on the point), that an application may be made to the Lord Chancellor to make a submission a rule of Court; unless it be so, the language of the second sec. of 9 & 10 Wm. III., c. 15, would be unintelligible. *Chitty's Arch. Prac.* 1220; *Story's Equity Juris.*, vol. II., p. 630; *Maddock's Equity*, vol. II., title, "*Arbitration*."

ARBITRATOR, or **ARBITER**, a disinterested person, to whose judgment and decision matters in dispute are referred. *Termes de Ley*, 50.

The civilians make a difference between *arbiter* and *arbitrator*, though both found their power in the compromise of the parties: the former being obliged to judge according to the customs of the law; whereas the latter is at liberty to use his own discretion, and accommodate the difference in that manner which appears most just and equitable.

Arbitrio domini res æstimari debet. 4 Inst. 274.—(The subject-matter is to be valued according to the award of the lord.)

Arbitrium est judicium. Jenk. Cent. 137.—(An award is a judgment.)

Arbitrium est judicium boni viri, secundum æquum et bonum. 3 Bul. 64.—(An award is the judgment of a good man, according to truth and justice.)

Arbor dum crescit; lignum cum crescere nescit. 2 Bul. 82.—(A tree is so called whilst growing; but wood when it ceases to grow.)

ARCA CYROGRAPHICA, a common chest with three locks and keys, kept by certain Christians and Jews, wherein all the contracts, mortgages, and obligations belonging to the Jews were kept to prevent fraud, by order of Richard 1st. *Hov. Ann.*, 745.

ARCHBISHOP [*ertz-bischoff*, Teut., *archeveque*, Fr., *archiepiscopus*, Lat., *ἀρχιεπίσκοπος*, Gk., of *ἀρχων*, chief, and *ἐπίσκοπος*, bishop, of *ἐπισκοπή*, to take care of]. The chief of the clergy in his province; he has supreme power under the Queen in all ecclesiastical causes, and superintends the conduct of other bishops his suffragans. The archbishops are said to be *enthroned*, when they are vested in the archbishopric, whereas bishops are said to be *installed*. England has two archbishops, Canterbury and York. The Archbishop of Canterbury is styled Primate of all England, and the Archbishop of York Primate of England. Ireland has four, Armagh, Dublin, Cashel, and Tuam, of whom the former is Primate of all Ireland. 1 Bl. Com. 381.

ARCHDEACON [*ἀρχων*, chief, and *διακονέω*, Gk., to minister], a substitute for the bishop, having ecclesiastical dignity and jurisdiction over the clergy and laity next after the bishop, either throughout the diocese or in some part of it only. He visits his jurisdiction once every year, and has a Court where he may inflict penance, suspend or excommunicate, prove wills, grant administrations, and hear ecclesiastical causes, subject to an appeal to the bishop, by 24 Hen. VIII.,

c. 12. He examines candidates for holy orders, and inducts clerks, upon receipt of the bishop's mandate. *Wood's Inst.* 30. The Law styles him the bishop's vicar or vicegerent.

ARCHERY, a service of keeping a bow for the lord's use in the defence of his castle. *Co. Litt.* 157.

ARCHES COURT (*curia de arcubus*). A Court of appeal belonging to the Archbishop of Canterbury, the judge of which is called the Dean of the Arches, because his Court was anciently held in the church of Saint Mary-le-Bow (*sancta Maria de arcubus*), so named from the steeple, which is raised upon pillars, built *archwise*, like so many bent bows. It is now held, as also the other principal spiritual courts, in the hall belonging to the college of civilians, commonly called Doctors' Commons. Its proper jurisdiction is only over the thirteen peculiar parishes belonging to the archbishop in London, but the office of Dean of the Arches having been for a long time united to that of the Archbishop's principal official, the Judge of the Arches, in right of such added office, receives and determines appeals from the sentences of all inferior ecclesiastical courts within the province. There was formerly an appeal to the King in Chancery, or to a Court of Delegates appointed under the Great Seal by 25 Hen. VIII., c. 19, as supreme head of the English church, instead of to the Bishop of Rome, who originally exercised the jurisdiction, but now the appeal is to the Judicial Committee of the Privy Council, according to 2 & 3 Wm. IV., c. 92, and 3 Wm. IV., c. 41. A suit is commenced in the Ecclesiastical Court by citing the defendant to appear and exhibiting a libel containing the complaint against him, to which he answers. Proofs are then adduced, and the Judge pronounces decree upon hearing the arguments of advocates, which is then carried into effect. Consult *Burn's Ecclesiastical Law*.

ARCHIVES [*arca*, Lat., a chest], a chamber or place where ancient records, charters, and evidences belonging to the Crown, the Courts of Chancery, Exchequer, or those of a community, city, or family, &c., are kept. It is sometimes used for the writings themselves, thus we say the archives of a college, a monastery, &c. *Cowel*.

ARENTARE, to rent or let out at a certain rent. *Blount*.

ARERIESMENT, hindrance, surprise, affrightment. *Ibid*.

A rescriptis valet argumentum. *Co. Litt.* 11.—(An argument drawn from rescripts is sound.) A rescript is a decision of the Pope or Emperor on a difficult or doubtful point of law.

ARGADIA, or ARGATHALIA, Argyleshire in Scotland.

ARGENTUM ALBUM, silver coin, or pieces of bullion which anciently passed for money. *Spelm.*

ARGENTUM DEI, God's money, i. e., money

given in earnest upon the making of any bargain, hence *arles*, earnest. *Blount*.

ARGIL, or ARGOIL, clay, lime, and sometimes gravel, also the lees of wine gathered to a certain hardness. *Law Fr. Dict.*

ARGUMENT, in rhetoric and logic, an inference drawn from premises, the truth of which is indisputable, or at least highly probable. In reasoning, Locke observes that men ordinarily use four sorts of arguments. The *first* is to allege the opinions of men, whose parts and learning, eminency, power, or some other cause, has gained a name and settled their reputation in the common esteem, with some kind of authority; this may be called *argumentum ad verecundiam*. *Secondly*, another way is to require the adversaries to admit what they allege as a proof or to require a better; this he calls *argumentum ad ignorantiam*. A *third* way is to press a man with consequences drawn from his own principles or concessions; this is known by the name of *argumentum ad hominem*. *Fourthly*, the using proofs drawn from any of the foundations of knowledge or probability; this he calls *argumentum ad judicium*, and observes that it is the only one of all the four that brings true instruction with it, and advances us in our way to knowledge.

Argumenta ignota et obscura ad lucem rationis proferunt et reddunt splendida. *Co. Litt.* 395.—(Arguments bring things hidden and obscure to the light of reason, and render them clear.)

ARGUMENTOSUS, ingenious. *Neub. l. 1, c. 14.* *Argumentum ab impossibili plurimum valet in lege.* *Co. Litt.* 92.—(An argument deduced from an impossibility greatly avails in law.)

Argumentum ab autoritate est fortissimum in lege. *Co. Litt.* 254.—(An argument from authority is most powerful in law.)

Argumentum ab inconvenienti est validum i lege; quia lex non permittit aliquod inconveniens. *Co. Litt.* 258.—(An argument from what is inconvenient is good in law, for the law will not permit any inconvenience.)

Argumentum à divisione est fortissimum in jure. 6 *Co.* 60.—(An argument from division is most powerful in law.)

Argumentum à majori ad minus negativè non valet; valet à converso. *Jenk. Cent.* 281.—(An argument from the greater to the less is of no force negatively, affirmatively it is.)

Argumentum à simili valet in lege. *Co. Litt.* 191.—(An argument from a like case avails in law.)

ARICONIUM, Kenchester, near Hereford.

DE ARIDA VILLA, Drayton, or Dreydon, in Shropshire.

ARIERBAN, or ARRIERE-BAN [according to Casseneuve, *ban* denotes the convening of the noblesse or vassals, who held fees immediately of the Crown, and *arriere*, those who only held of the Crown mediately], an edict of the ancient Kings of France and Germany, commanding all their vassals, the noblesse, and the vassals' vassals, to enter the army, or forfeit their estates on refusal. *Spelm.*

ARIETUM LEVATIO, an old sportive exercise, supposed to be the same with running at the quintain. *Cowel*.

ARISTOCRACY [*ἀριστος*, greatest, and *κράτος*, Gk., to govern], a form of government which is lodged in a council composed of select members or nobles, without a monarch, and exclusively of the people. 1 *Bl. Com.* 48; *Paley's Polit. Phi.*; *Brougham's Polit. Phi.*

Arma in armatos sumere jura sinunt. 2 Jus. 574.—(The laws permit to take arms against armed persons.)

ARMA DARE, to dub or make a knight. The word "*arma*" is here rendered a sword, although a knight was sometimes made by giving to him the whole armour. *Ken. Paroch. Antiq.* 288.

ARMA LIBERA (free arms). When a servant was set free, a sword and a lance were usually given to him. *Leg. Wil.*, c. 65.

ARMA MOLUTA, sharp weapons that cut, in contradistinction to such as are blunt (*arma emolita*), which only break or bruise. *Fleta*, l. 1, c. 33, par. 6.

ARMA MUTARE, to change arms, a ceremony observed in confirmation of a league or friendship. *Blount*.

ARMA REVERSATA, reversed arms, a punishment for a traitor or felon. *Cowel*.

ARMARIA, see *ALMARIA*.

ARMIGER, an esquire. A title of dignity belonging to gentlemen who bear arms. *Ken. Paroch. Antiq.* 576..

ARMISCARA, an ancient mode of punishment, which was to carry a saddle at the back as a token of subjection. *Spelm.*

ARMORIAL BEARINGS, a device depicted on the (now imaginary) shield of one of the nobility, of which gentry is the lowest degree. The criterion of nobility is the bearing of arms or armorial bearings received from ancestry and descent. There is nothing, however, to prevent persons assuming arbitrary insignia and armorial bearings to which they are not entitled; and all persons entitled to bear arms can register their genealogies and families at the Herald's College, St. Bennet's Hill, London, on payment of a moderate fee, the heralds being the examiners of these matters and the recorders of genealogies. The 43 Geo. III., c. 161, imposes an assessed tax upon armorial bearings, whether borne on plate, carriages, seals, or in any other way. Persons keeping a coach or other carriage pay annually 2l. 8s. Persons not keeping a coach, &c., but liable to the house or window duty, pay 1l. 4s., and all other persons 12s. annually. The 3 Vict. c. 17, imposed an additional duty of 10l. per cent. on all assessed taxes, which begun on the 14th May, 1840.

Armorum appellatione, non solum scuta et gladii, et galeæ, sed et fustes et lapides continentur. Co. Litt. 162.—(Under the words arms are included not only shields and swords and helmets, but also clubs and stones.)

ARMOUR, and **ARMS**, things which a person wears for defence, or takes in hand, or uses

in anger, to strike or cast at another. Arms are also *insignia*, i. e., ensigns of honour, which were formerly assumed by soldiers of fortune and painted on their shields to distinguish them, the ancient coat of mail not being a mark of distinction from its covering the whole body. King Richard I., during his crusade, made arms hereditary. Every subject in this realm has a right, springing from the indigenous principle of personal liberty, to carry arms for defence suitable to his condition and degree and such as are allowed by law, which is embodied in the Bill of Rights, 1 W. & M. s. 2, c. 2. The 2 Edw. III., c. 3, prohibits persons going armed under circumstances which may tend to terrify the people or indicate an intention of disturbing the public peace. The 60 Geo. III., c. 1, prohibits the training of persons without lawful authority to the use of arms, and authorises any justice of the peace to disperse any assembly of persons as he may find engaged in such occupation, and to arrest any of the persons present. Power is vested in the Crown, by 3 & 4 W. IV., c. 42, s. 104, to prohibit the exportation of arms, ammunition, and gunpowder out of this kingdom, and of licensing the importation of gunpowder for the use of the royal stores. As to arms in Ireland, see 1 W. 4, s. 44, and 6 & 7 Vict., c. 74.

ARMY. It is a constitutional principle that the raising or keeping a standing army within the kingdom during peace, unless it be by consent of Parliament, is contrary to law. 1 W. & M., s. 2, c. 2; *Montesq. Sp. Laws*, ii. 6. It has been judged necessary ever since 1689, for the safety of the kingdom, the defence of the possessions of Great Britain, and the preservation of the balance of the European powers, to maintain, even in time of peace, a standing army, under the command of the Sovereign. 13 Car. II., c. 6. An act of Parliament, therefore, passes annually (called the Mutiny Act), authorizing the maintenance of the regular forces deemed necessary for the service of the State, who are, however, *ipso facto*, disbanded at the expiration of every year, unless continued by Parliament. Provision is made for the enlisting and billeting of troops, as well as their dispersion among the several innkeepers and victuallers throughout the kingdom. And for the government of the army, the Sovereign is empowered to make articles of war, which must be judicially taken notice of by all the judges and Courts; also to erect or grant authority to convene courts martial, with a jurisdiction to try and punish offences according to such articles of war, and the provisions of the Mutiny Act. Consult *Mac Arthur on Courts Martial*.

ARNALDIA, a disease that makes the hair fall off like the *alopecia*, or like a distemper in foxes. *Rog. Hoved.* 693.

ARNALIA, arable grounds. *Domesday*, tit. *Essex*.

AROMATARIUS, a word often used for a

grocer, but not held good in law proceedings. 1 *Vent.* 142.

ARPEN, or ARPENT, an acre or furlong of ground. According to Domesday Book, 100 perches make an arpent. *Blount.*

ARPENTATOR, a measurer or surveyor of land. *Cowel.*

ARQUEBUSS, a short hand-gun, a caliver or pistol, mentioned in some of our ancient statutes. *Law Fr. Dict.*

ARRACK, a spirit procured from distillation out of the Cocoa-nut tree, and imported from the East Indies, upon which a duty is payable.

ARRALATIO PEDITUM, arraying of foot soldiers. 1 *Edw. II.*

ARRAIERS, officers who had the care of the soldiers' armour, and whose business it was to see them duly accoutred. Commissioners are now appointed for the same purpose. *Blount.*

ARRAIGN [*ad rationem ponere*, to set in order], to call a prisoner to the bar of the Court to answer the matter charged upon him in the indictment. The arraignment of a prisoner consists of three parts, 1, calling him to the bar, and by holding up his hand or otherwise, making it appear that he is the party indicted. Holding up the hand is a mere ceremony and is frequently dispensed with, it only being necessary for the prisoner to admit that he is the person indicted. 2, Reading the indictment to him distinctly in English, that he may fully understand the charge. 3, Demanding whether he be guilty or not guilty, and entering his plea, and then demanding how he will be tried, the common answer to which is by God and the country. The pleas upon arraignment are either the general issue, i. e., not guilty, or a plea in abatement or in bar, or the prisoner may demur to the indictment, or he may confess the fact, upon which the Court proceeds immediately to judgment, 7 & 8 *Geo. IV.*, c. 28, s. 1. But if the prisoner "shall stand mute of malice, or will not answer directly to the indictment or information, in every such case it shall be lawful for the Court, if it shall so think fit, to order the proper officer to enter a plea of 'not guilty' on behalf of such person, and the plea so entered shall have the same force and effect as if the person had so pleaded the same" (s. 2). 2 *Hale's P. C.* 161; 4 *Bl. Com.* 322; *Hawk. P. C.*, c. 28, s. 1.

ARRAY, to rank or set forth a jury of men impanelled upon a cause. To challenge the array of the panel is at once to except against all persons arrayed or impanelled, in respect of partiality or some default in the sheriff. *Co. Litt.* 156. If the sheriff be of affinity to any of the parties, or if any one or more of the jurors are returned at the nomination of either party, or for any other partiality, the array shall be quashed.

ARRAY, *military commission of*. Previous to the reign of Henry VIII., in order to protect the kingdom from domestic insurrections or the prospect of foreign invasions, it was

usual from time to time for our princes to issue commissions of array and send into every county officers in whom they could confide, to muster, array, or set in military order the inhabitants of every district; its form was settled by 5 *Hen. IV.*, so as to prevent the insertion therein of any new penal clauses. *Rushworth*, pt. 3, p. 662, 667.

ARREARS, or ARREARAGES, money unpaid at the due time; as rent behind; the remainder due after payment of a part of an account; money in the hands of an accounting party. *Cowel.*

ARRECTATUS, one suspected of a crime. *Offic. Coronat.*

ARRECTED, reckoned, considered. 1 *Inst.* 173 b. & n.

ARRENATUS, arraigned, accused. *Rot. Parl.* 21 *Edw. I.*

ARRENTATION [*arrendar*, Span.], licensing the owner of lands in a forest, to enclose them with a low hedge and small ditch, according to the assize of the forest, under a yearly rent. *Saving the arrentations*, is saving a power to give such licences. *Ordin. Forestæ*, 34 *Edw. I.*, s. 5.

ARREST [*arrêter*, Fr., to stop or stay], an execution of a command of some Court of Record or officer of justice by restraining the liberty of a man's person, obliging him to be obedient to the law. Arrests are either in civil or criminal cases: civil arrests must be effected, in order to be legal, by virtue of a precept or writ issued out of some Court, but every person has authority to arrest criminals without warrant or precept. *Termes de la Ley*, 52. The abuses of gaolers and sheriffs' officers towards prisoners are guarded against by 32 *Geo. II.*, c. 28; the chief provisions of which are that an officer shall not carry a prisoner to any tavern, &c., without his consent, nor charge him for any liquor but such as he shall freely call for, nor demand for caption or attendance any other than his legal fee, nor exact any gratuity money, nor carry his prisoner to gaol within twenty-four hours after his arrest, unless the prisoner refuse to go to some safe house (except his own), of his own choosing. Nor shall any officer take for the diet, lodging, or expenses of a prisoner, more than shall be allowed by an order of Sessions. Bailiffs must show a copy of the act to prisoners, and permit perusal of it, and the prisoner may send for his own victuals, bedding, &c. The two great Statutes for securing the liberty of the subject against unlawful arrests and suits, are *Magna Charta*, and *Habeas Corpus Act*, 31 *Car. II.*, c. 2, which is amended and enforced by 56 *Geo. III.*, c. 100. As to those persons who are privileged from arrest, read chap. 1, of the 2d Part, Book 2, of *Chitty's Archbold's Practice*.

ARREST OF JUDGMENT, moved for by an unsuccessful defendant upon affidavit, that the judgment for the plaintiff be arrested or withheld, notwithstanding a verdict given, on the ground that there is some error

appearing on the face of the record which vitiates the proceedings. Judgment may be arrested for good cause in criminal cases, if the indictment be insufficient. 3 *Inst.* 210; *Stephen's Pleading*, 106. If the judgment is arrested, each party pays his own costs.

ARREST OF INQUEST, pleading in arrest of taking the inquest upon a former issue, and showing cause why an inquest should not be taken. *Bro.*, tit. *Repleader*.

ARRESTANDIS BONIS NE DISSESSENTUR, a writ which lay for a person whose cattle or goods were taken by another, who, during a contest, is likely to make away with them, and not having the ability to render satisfaction. *Reg. Orig.* 126.

ARRESTANDO IPSUM QUI PECUNIAM RECEPIT, a writ which issued for apprehending a person who had taken the King's prest money to serve in the wars, and then hid himself in order to avoid going. *Ibid.* 24.

ARRESTMENT, a process of attachment prohibiting a person, in whose hands a debtor's moveables are, to pay or deliver up the same to such debtor, till a creditor, who has procured an arrestment to be laid on, be satisfied, either by caution, i. e., security or payment, according to the grounds of arrestment. *Scotch Law*.

ARRESTMENT JURISDICTIONIS FUNDANDÆ CAUSÆ, a process to bring a foreigner within the jurisdiction of the Courts of Scotland, for a foreigner owes no obedience to the decisions of these courts, and, therefore, unless his person or effects be within such jurisdiction, a judgment of such court would be ineffective. This warrant then attaches a foreigner's person or arrests his goods, and these will not be released except by finding caution or security that the foreigner shall appear at all diets of court. *Ibid.*

ARRESTO FACTO SUPER BONIS MERCATORUM ALIENIGENORUM, a writ against the goods of aliens found within this kingdom, in recompence of goods taken from a denizen in a foreign country, after denial of restitution. *Reg. Orig.* 129. The ancient civilians called it *clarigatio*, but by the moderns it is termed *reprisalia*.

ARRETTED, charged, imputed, or laid unto. The convening a person charged with a crime before a judge. *Starndf. Pl. Co.* 45. It is used sometimes for *imputed* or *laid unto*; as, no folly may be *arretted* to one under age. *Cowel*.

ARRHA [*arrhe*, Fr.], earnest, pledge, evidence of a completed bargain. *Jacob*.

ARRIAGE, and **CARRIAGE**, indefinite services formerly demandable from tenants, abolished by 20 *Geo. II.*, c. 50.

ARRIERE FEE or **FIEF**, a fee dependant on a superior fee. These fees originated, when dukes and counts, rendering their governments hereditary, distributed to their officers parts of the domain, and permitted those officers to gratify the soldiers under them in the same manner. *Encyc. Lond.*

ARRIERE-VASSAL, the vassal of a vassal.

ARROWS, all heads of, were to be well brazed and hardened at the point with steel, on pain of forfeiture and imprisonment, and marked with maker's name. 7 *Hen. IV.*, c. 7.

ARRURA, a day's ploughing. *Paroch. Antiq.* p. 41.

ARSENALS, dockyards, magazines, and other public stores. The wilful firing or destroying them is punished by death. 12 *Geo. III.*, c. 24.

ARSER IN LE MAIN, burning in the hand. The punishment of criminals, who had the benefit of clergy, which benefit was abolished by 7 & 8 *Geo. IV.*, c. 28. *Termes de Ley*.

Ars fit quod à teneris primum conjungitur annis. 3 *Inst. Epil.*—(That becomes an art which is first joined to tender years.)

ARSON [from *ardeo*, Lat., to burn], the maliciously and voluntarily burning a house of another. The law upon this subject is consolidated in the 7 & 8 *Geo. IV.*, c. 30, the second section of which constitutes it a capital offence unlawfully and maliciously to set fire to any church or chapel, or to any chapel for the religious worship of dissenters duly registered, or to any house, stable, coach-house, out-house, warehouse, office, shop, malt-house, mill, hop-oast, barn, or granary, or to any building or erection used in carrying on any trade or manufacture, or any branch thereof, whether the same or any of them respectively shall then be in the possession of the offender, or in the possession of any other person, with intent thereby to injure or defraud any person. The 17th sect. renders it also a capital offence wilfully and maliciously to set fire to any stack of corn, grain, pulse, straw, hay, or wood. Setting fire to a dwelling-house is punished by death. *Leach's Hawk. P. C.*, i. c. 39; 1 *Hale's P. C.* 569.

ARSUR IN LE MAIN [Law French], burning in the hand, the punishment of criminals that had the benefit of clergy. *Termes de Ley*.

ARSURA, the trial of money by fire, after it was coined. *Blount*.

ART and **PART**, said of a person who has committed a crime, and was a contriver of it and acted his part in it. *Scotch Law*.

ARTHEL, or **ARDHEL**, to avouch, as if a man were taken with stolen goods in his possession, he was allowed a lawful *arthel*, i. e., vouchee, to clear him of the felony, but provision was made against it by 28 *Hen. VIII.*, c. 6. *Blount*.

ARTICLE, a complaint exhibited in the Ecclesiastical Court by way of libel. 3 *Bl. Com.* 109.

ARTICLED CLERK, a pupil of an attorney or solicitor, who undertakes, by articles of clerkship, containing covenants mutually binding, to instruct him in the principles and practice of the Profession. As to the articles of service, their registration and enrolment, the mode of service, examination, admission, and fees, see "The Attorneys and Solicitors Act," 6 & 7 *Vict.*, c. 73.

ARTICLES, LORDS OF, a committee of the

- Scottish Parliament, which, is the mode of their election, and by the nature of their powers, were calculated to increase the influence of the Crown, and to confer upon it a power equivalent to that of a negative before debate. This system appeared inconsistent with the freedom of Parliament, and at the Revolution, the convention of estates declared it a grievance, and accordingly it was suppressed by the *Act 1690, c. 3.*
- ARTICLES OF THE PEACE**, a complaint exhibited either in the Queen's Bench at Westminster, Court of Oyer and Terminer, or Sessions of the Peace, when any one has just cause to fear that some one will burn his house, do him some corporal hurt, or procure a third person to perpetrate it. Upon articles setting forth the fact being sworn to by the complainant, sureties of the peace are taken for such a length of time as the Court shall think necessary, not being confined to a twelvemonth. 1 *T. R.* 696; *Bac. Ab.*, tit. *Surety of the Peace.*
- ARTICLES OF RELIGION**, commonly called the 39 Articles, a body of divinity drawn up by the convocation in 1562, and confirmed by James I. Persons admitted into ecclesiastical offices and matriculated, either at the Oxford or Cambridge University, must subscribe to them. Consult *Burnet on the Articles.*
- ARTICLES OF ROUP**, the conditions under which property is exposed to sale by auction. *Scotch Law.*
- ARTICLES OF WAR**, a code of laws for the regulation of the land forces, made in pursuance of the several annual acts against mutiny and desertion. There are also *Articles of the Navy* for the government of the royal fleet. 31 *Geo. II.*, c. 10.
- ARTICULATE ADJUDICATION**, used where there are more debts than one due to the adjudging creditor, when it is usual to accumulate each debt by itself, so that in case of an error in ascertaining or calculating one of the debts, the error may not reach any other debt. *Scotch Law.*
- ARTICULI CLERI**, Statutes containing certain articles relating to the church, clergy, and causes ecclesiastical. 9 *Edw. II.*, st. 1.
- ARTIFICERS**, persons who are masters of their art, and whose employment consists chiefly in manual labour. 5 *Geo. IV.*, c. 97, 6 *Geo. IV.*, c. 105. *Cunningham.*
- ARUNDEL**, the *Earl of*, the only peer who held his earldom by prescription.
- ARUNDINETUM**, a ground or place where reeds grow. 1 *Inst.* 4.
- ARUNDINIS VADUM**, the ancient name of Redbridge, in Hampshire.
- ARUNFINA VALLIS**, the ancient name of Arundel, in Sussex.
- ARVIL SUPPER**, a feast or entertainment made at a funeral in the north of England; *arvilbread* is bread delivered to the poor at funeral solemnities, and *arvil*, *arval*, or *arfal* are the burial or funeral rites. *Cowel.*
- ARVONICA**, the ancient name of Carnarvonshire.
- ARURA**, a day's work at plough. *Old Records.*
- ASCESTERIUM**, a monastery. *Du Cange.*
- ASPORTATION**, carrying away goods. In all felonies, there must be both a taking and a carrying away (*cessit et asportavit*). 4 *Bl. Com.* 431.
- ASSACH**, or **ASSATH**, a custom of purgation formerly used in Wales, by which an accused party cleared or purged himself of the accusation by the oaths of three hundred men. Abolished by 1 *Hen. V.*, c. 6. Consult 27 *Hen. VIII.*, c. 7. *Spelm.*
- ASSART**, or **ESSART**, an offence committed in the forest, by pulling up the trees by the roots, that are thickets and coverts for deer, and making the ground plain as arable land. It differs from waste, in that waste is the cutting down of coverts which may grow again, whereas assart is the plucking them up by the roots and utterly destroying them, so that they can never afterward grow. This is not an offence if done with license to convert forest into tillage ground. Consult *Manwood's Forest Laws*, part 1, p. 171.
- ASSASSINATION**, murdering a person for hire. *Jacob.*
- ASSAULT**, an attempt or offer, with force and violence, to do a corporal hurt to another, as by striking at him with or without a weapon. No words, how provoking soever they be, will amount to an assault. Assault does not always necessarily imply a hitting or blow; because in trespass for *assault and battery*, a person may be found guilty of the assault, but not guilty of the battery. But *battery* always includes an assault. 1 *Hawk. P. C.*, c. 62, § 1.
- ASSAY of weights and measures**, the examining of weights and measures by clerks of markets, &c. *Blount.*
- ASSAYER OF THE KING**, an officer of the Mint, who tries the silver: he is indifferently appointed by the Master of the Mint and the Merchants, who carry silver thither for exchange. *Ibid.*
- ASSAYERS**, persons who test or prove metals, &c.
- ASSAYSIARE**, to associate or take as fellow judges; used in old charters. *Cowel.*
- ASSECURARE**, to secure by pledges; a solemn interposition of faith. *Hov.* 1174.
- ASSEDATION**, possession by a tack or lease, &c. *Scotch Law.*
- ASSEMBLY, GENERAL**, the highest ecclesiastical court in Scotland, composed of a representation of the ministers and elders of the church, regulated by the *Act 5th, Assembly*, 1694.
- ASSEMBLY, UNLAWFUL**, a meeting of three or more persons to do an unlawful act, whether they do it or not. 3 *Inst.* 9; 1 *Hawk.* 155.
- ASSENT**, or **CONSENT**, agreeing to, or recognising a matter, as an executor's assent to a legacy, or the assent of a corporation to bye laws, &c.
- ASSESSORS**, literally those who sit by the side of another; persons appointed to ascertain

[and fix the value of taxes, rates, &c. Also persons associated with judges of some inferior courts to advise and direct the decisions of such judges.

ASSETS [*assay*, Fr., *i. e.*, *Satis*, Lat.], property both real and personal in the hands of an heir, executor, or administrator, *enough* to satisfy the debts, liabilities, and legacies of the ancestor or testator. Assets are either legal, *i. e.*, recoverable in a Common Law Court, as land, a bill of exchange, &c.; or equitable, recoverable only in equity, as an equity of redemption, debts due from trustees to *cestui que trusts*; equitable assets are administered for the payment of debts *pari passu*, but legal according to the following scheme: 1. Personal estate, not specifically excepted; 2. Real property expressly devised for the satisfaction of debts; 3. Lands descended; 4. Lands specifically charged with the liquidation of debts; and lastly, Estates beneficially devised. The 3 & 4 Wm. IV., c. 104, renders freehold and copyhold estates in all cases equitable assets for the payment of simple contract and specialty debts. Assets are also divided into *assets per descent* and *assets inter maines*; the first are, where a person is bound in an obligation and dies seized of lands which descend to his heir, the lands will be *assets per descent*, the heir is charged to satisfy the obligation so far as such lands will extend: the second are, when a person who is indebted dies leaving to his executors assets sufficient to pay his debts and legacies, they are called assets in their hands. *Termes de Ley*, 56, 77.

In commerce the term is used to designate the stock in trade and the entire property of all sorts, belonging to a merchant, or to a trading association.

ASSEWIARE, to draw or drain water from marsh grounds. *Cowel*.

ASSIDERE, or **ASSIDARE**, to tax equally. Sometimes used in the sense of assigning an annual rent to be paid out of a particular farm, &c. *Mat. Par.*, anno 1232.

ASSIGN, variously applied; generally, to set over a right to another, or appoint a deputy; specially, to set forth or point at, as to assign error, false judgment, &c. The judges are said to be assigned to take assizes.

ASSIGNATION, anything simply ceded, yielded, and assigned to another. *Scotch Law*.

Assignatus utitur jure auctoris.—(That which is assigned is made use of in right of the author.)

ASSIGNEE, or **ASSIGN**, a person appointed by another to do any act or perform any business; also a person, who takes some right, title, or interest in things by an assignment from an assignor. They are divided into: 1, assignees by *deed*, as when a lessee of a term sells or assigns it to another, he is an assignee by deed; and, 2, assignees by *law*, as when property devolves upon an executor, without any specific appointment, the executor is an assignee in law to the testator: assignees, however, are especially those persons

in whom the property of a bankrupt vests by virtue of their appointment. These are either *official* assignees, appointed by the commissioner, or *creditors'* assignees, appointed by the creditors who prove debts under the fiat to the value of 10*l.* or upwards, at the first public sitting, and confirmed by the commissioners. As to their duties, rights, and liabilities, consult *Flather's Arch. Bankruptcy*, and *Montagu and Ayrton's Bankruptcy*, by *Koe and Miller*, tit. *Assignees*.

ASSIGNMENT, a transferring or setting over to another the interest which a person possesses in any thing. 2 *Bl. Com.*, 326.

ASSIMULARE, to put highways together. *Leg. Hen. I.*, c. 8.

ASSISA CADERE, to be nonsuited, as when there is such a plain and legal insufficiency in a suit, that the plaintiff cannot successfully proceed any further in it. *Fleta*, lib. 4, c. 15; *Bracton*, lib. 2, c. 7.

ASSISA CADIT IN JURATAM, to submit a controversy to trial by jury. *Fleta*, lib. 4, c. 15.

ASSISA CONTINUANDA, an ancient writ addressed to the justices of assize for the continuation of a cause, when certain words alleged could not have been produced in time by the party having occasion for them. *Reg. Orig.* 217.

ASSISA PANIS ET CEREVISA, the power or privilege of assizing or adjusting the weight and measure of bread and beer. 51 *Hen. III.* *Cowel*.

ASSISA PROROGANDA, an obsolete writ, which was directed to the judges assigned to take assizes, to stay proceedings, by reason of a party to them being employed in the King's business. *Reg. Orig.* 208.

ASSISE [*assidere*, Lat., to sit together], a jury, who sit together for the purpose of trying a cause, or rather a court or jurisdiction, which summons a jury by a commission of assize to take the assizes. Hence the judicial assemblies held by the Queen's commission in every county as well to take indictments as to try causes at *Nisi Prius*, are commonly termed the assizes. There are two commissions, 1, *general*, which is issued twice a year to the judges of the Superior Courts of Common Law at Westminster; two of whom are assigned to every circuit. The English counties are divided into six circuits, viz:—the Northern, Midland, Oxford, Norfolk, Home, and Western circuits. Middlesex is excepted, for the Superior Courts being there situated, sittings, both in London and at Westminster, are held in and after every term for the trial of *Nisi Prius* causes; and for criminal trials, the Central Criminal Court, at Justice Hall, in the Old Bailey, hold 12 sessions in the year. The twelve counties of Wales are divided into two circuits, viz.: the North and South circuits. The judges have four several commissions: 1, of *oyer and terminer*, directed to them and many other gentlemen of the county, by which they are empowered to try treasons, felonies, &c. This is the largest commission.

2, *Of gaol delivery*, directed to the judges and the clerk of assize associate, empowering them to try every prisoner in the gaol committed for any offence whatsoever, so as to clear the prisons. 3, *Of Nisi Prius*, directed to the judges, the clerks of assize and others, by which civil causes, in which issue has been joined in any one of the Superior Courts, are tried on circuit by a jury of twelve men of the county, in which the venue is laid, and on return of the verdict to the court above, usually on the 1st day of the term following, the Court gives judgment on the 5th day after, allowing the four intermediate days to either party, if dissatisfied with the verdict, to move for a new trial. These causes by the practice of the courts are usually appointed to be tried at Westminster in some Easter or Michaelmas Term, by a jury returned from the county, in which is laid the venue, but, with this proviso—"Nisi Prius" (unless before) the day appointed the judges of assize come into the county in question. This they are sure to do in the preceding vacation, and the trial is there had instead of at Westminster. 4, A commission of the peace, by which all justices are bound to be present at their county assizes, besides the sheriffs, to give attendance to the judges, or else suffer a fine. There used to be another commission, that of *assise*, directed to the judges and clerk of assize, to take assizes and do right upon writs of assize brought before them, by such as were wrongfully thrust out of their possessions. These writs are abolished, and recourse is had to an action of ejectment, tried at *Nisi Prius*. 2, The other division of commissions is *special*, granted to certain judges to try certain causes. *Bracton, lib. 3; 3 Bl. Com. 60, 269.*

ASSISE OF MORT D'ANCESTOR, a writ which lay where a person's father, mother, brother, sister, uncle, aunt, &c., died, seized of land and a stranger abated. It is abolished by 3 & 4 *Wm. IV., c. 27.*

ASSISE OF NOVEL DISSEISIN, an action of a similar nature as the one above, although it differed in many points, but like it, it is abolished by 3 & 4 *Wm. IV., c. 27.*

ASSISE OF DARREIN PRESENTMENT, or last presentation; it lay when a person, or his ancestors, under whom he claims, had presented a clerk to a benefice, who is duly instituted, and afterwards, upon the next avoidance, a stranger presents a clerk, thus disturbing the right of the lawful patron, upon this, the patron issued this writ, directed to the sheriff to summon an assize or jury, to enquire who was the last patron that presented to the church now vacant, of which the plaintiff complains that he is deformed by the defendant. *Termes de Ley, 473.* It is, however, abolished, and recourse must be had to the action of *quare impedit*. 3 & 4 *Wm. IV., c. 27.*

ASSISE DE UTRUM, an obsolete writ, which lay for the parson of a church whose predecessor had alienated the lands and rents of it. *P. N. B. 49.*

ASSISE OF THE FOREST, a Statute touching gardens to be observed in the King's forests. *Manwood, 35.* For the learning of assise generally, consult *Com. Dig., tit. Assise.*

ASSISER, an officer who has the care and oversight of weights and measures.

ASSISORS, Scottish jurors. *Scotch Law.*

ASSISTANCE, WRIT OF, appears to have been first employed in the reign of James 1st; from that time, though in general parlance it is said that the decree of the Court of Chancery acts only *in personam*, yet, if the possession of lands be decreed and the defendant refuse to perform the decree, the Court directs this writ to the sheriff, in enforcement of its decree. (13th Ord. 26th Aug. 1841; 16th Ord. 26th Oct. 1842.)

ASSISUS, rented or farmed out for such an assize or certain assessed rent in money or provisions. *Blount.*

ASSISTHMENT [from *ad* and *sithe*, Sax., vice], a weregeld or compensation by a pecuniary mulct. *Cowel.*

ASSOCIATION, a writ or patent sent by the King to the justices appointed to take assises to have others (serjeants-at-law for instance) associated with them; it is usual where a judge becomes unable to attend to his circuit duties or dies. *Reg. Orig. 201.*

ASSOCIATIONS, *unlawful*, see SOCIETIES.

ASSOILE, to deliver from excommunication. *Staundf. Pl. Cr. 72.*

ASSOILZIE, to acquit a defendant, and to find a person not guilty of a crime. *Scotch Law.*

ASSUMPSIT [*assumere*, Lat., to take as granted], a promise in the nature of a verbal or parol covenant, upon the breach of which an action of *assumpsit* or promises lies to recover damages for the breach of such simple contract, i. e., a promise not under seal. Such promises may be express or implied, and the law always *implies* a promise to do that which a party is legally liable to perform. This remedy by *assumpsit* is, consequently, of very large and extensive application. The action of *assumpsit*, or as it is called in practice, promises, is, in fact, an action of trespass on the case, whereby a compensation in damages may be recovered for an injury sustained by the non-performance of a parol agreement. *Selw. Nisi Prius, tit. "Assumpsit," Stephens' Pleading, 18, 40.*

ASSUMPTION, the day of the death of a saint, *quia ejus anima in cælum assumitur* (because his soul ascends to heaven). *Du Cange.*

ASSURANCE. The legal evidences of the translation of property, called *common* assurances, by which every man's property is secured to him, and controversies, doubts, and difficulties prevented and removed. 2 *Bl. Com. 293.*

ASSURANCE, see INSURANCE.

ASSYSERS (jurors), persons, who, in an inquest, serve a man, heir or judge, the probation in criminal causes. *Scotch Law.*

ASSYTHMENT, a reparation made for mutilation or slaughter. *Ibid.*

ASSYTH THE KING, to cause malefactors to pay a modified fine. *Scotch Law*.

ASTEISM, in rhetoric, a genteel irony, or handsome way of deriding another.

ASTER, or HOMO ASTER, a resident. *Brit.* 151.

ASTIPULATION, a mutual agreement, assent and consent between parties.

ASTRARIUS HÆRES [*astre*, the hearth of a chimney], an heir apparent, who has been placed, by conveyance, in possession of his ancestor's estate, during such ancestor's life time. *Co. Litt.* 8.

ASTRICATION TO A MILL, a servitude, by which grain growing on certain lands or brought within them, must be carried to a certain mill to be ground, a certain multure or price being paid for the same. *Jacob*.

ASTRUM, a house or place of habitation. *Cowel*.

A summo remedio ad inferiorem actionem, non habetur ingressus, neque auxilium. *Fleta*, l. 6.—(From the highest remedy to the lower action there is neither ingress, nor assistance.)

ASYLUMS FOR LUNATICS, places set apart for the treatment and habitation of persons of unsound mind. The 2 & 3 Wm. IV., c. 107, and 3 & 4 Wm. IV., c. 64, amended and continued by 5 & 6 Vict., c. 87, provide for their care and treatment in asylums and hospitals.

ATAVUS, the great grandfather's or great grandmother's grandfather. The ascending line of lineal ancestry runs thus:—Pater, Avus, Proavus, Abavus, Atavus, Tritavus, the seventh generation in the ascending scale will be Tritavi-pater, and the next above it Proavi-atavus. *Juv. Sat.* III. 312.

ATHANATION, the ancient name of the island of Thanet, in Kent.

ATHE, ATHA, or ATH [Sax.], an oath. *Blount*.

ATHE, or ADDA, a privilege of administering an oath in cases of right and property. *Blount*.

ATHEISM, the disbelief of a God. The Scottish Law ranks it under the head of blasphemy, and punishes it with death.

ATHESIS FLUVIUM, the ancient name of the river Tees, in Cumberland.

ATIA, an ancient writ of enquiry whether a person be committed to prison on just cause of suspicion. *Cowel*; *Ash*.

ATILIA, utensils or country implements. *Blount*.

ATRIUM, a court before a house, or a churchyard. *Cowel*.

ATTACH, to take or apprehend by commandment of a writ or precept. It differs from arrest, because it takes not only the body, but sometimes the goods, whereas an arrest is only against the person; besides, he who attaches, keeps the party attached in order to produce him in court on the day named, but he who arrests, lodges the person arrested in the custody of a higher power, to be forthwith disposed of. *Fleta*, lib. 5, c. 24.

ATTACHIAMENTA BONORUM, a distress

formerly taken upon goods and chattels, where a person is sued for personal estate or debt by the legal *attachiators* or bailiffs, as security to answer an action. *Blount*.

ATTACHIAMENTA DE SPINIS ET BOS-CIS, a privilege granted to the officers of a forest to take to their own use thorns, brush, and windfalls, within their precincts. *Kenn. Par. Antiq.*, 209.

ATTACHMENT, a process from a Court of Record, awarded by the judges at their discretion on a bare suggestion, or on their own knowledge, against a person guilty of a contempt, who is punishable in a summary manner. Contempt may be thus classed: 1, Disobedience to the Queen's writs; 2, Contempts in the face of a court; 3, Contemptuous words or writings concerning a court; 4, Refusing to comply with the rules and awards of a court; 5, Abuse of the process of a court; and, 6, Forgery of writs, or any other deceit tending to impose on a court. *Leach's Hawk. P. Cr.*, c. 22, § 33.

ATTACHMENT, FOREIGN, a process which takes the goods of foreigners found in some liberty to satisfy creditors. *Com. Dig.*, tit. *Attachment, Foreign*.

ATTACHMENT OF THE FOREST, one of the three courts held in forests. The highest court is called Justice in Eyre's seat; the middle, the Swainmote; and the lowest, the Attachments. *Manwood*, 90, 99.

ATTACHMENT OF PRIVILEGE. When a person, by virtue of his privilege, calls another into that court, to which he himself belongs, to answer some action, as an attorney, &c. It is also a power to apprehend a person in a privileged place. *Terms de Ley*, 59. The 2 Wm. IV., c. 39 (commonly called the Uniformity of Process Act), virtually abolished this proceeding, and the 1 & 2 Vict., c. 110, enacts that all personal actions in any of the Superior Courts of Common Law at Westminster shall be commenced by writ of summons.

ATTAINDER [*attinctus*, Lat.], the stain or corruption of the blood of a criminal capitally condemned: it is the immediate inseparable consequence, by the common law, on sentence of death being pronounced, or of outlawry for a capital offence. The criminal, then, becomes dead in law, technically called *civiliter mortuus*. It differs from conviction, in that it is *after* judgment, whereas, conviction is upon the verdict of guilty, but *before* judgment pronounced, and may be quashed upon some point of law reserved, or judgment may be arrested. The consequences of attainder are forfeiture of property and corruption of blood. 4 *Bl. Com.* 380.

ATTAINT, *Writ of*, issued to enquire whether a jury of twelve men gave a false verdict, that so the judgment following thereupon might be reversed. This writ is abolished by 4 Geo. IV., c. 50, §§ 60, 61. A corrupt juror is punishable by fine and imprisonment, upon an indictment or information.

ATTAINTURE, legal censure.

ATTAL SARISIN [*i. e.*, the leavings of the

Saracins, Sassins, or Saxons], an old deserted mine, so called by the Cornish miners. *Cowel*.

ATTEGIA, a little house. *Blount*.

ATTENDANT, one who owes a duty or service to another, or depends upon another. *Termes de Ley*, 61.

ATTENDANT TERM, terms for years in real property are created for many purposes, *e. g.*, to furnish money for the payment of debts, to secure rent charges or jointures, to raise portions for younger children, daughters, &c. Now although the purposes for which the term was originally created, has been satisfied or has failed, yet, not being surrendered, it continues to exist, the legal interest remaining in the trustees, to whom it was at its creation limited, or, if deceased, in their personal representatives, but the person entitled to the inheritance, then becomes, according to equitable principle, entitled to the beneficial interest in such term, and the termor is held to be such person's trustee. This beneficial interest is subordinate to and merely attendant upon the higher estate possessed by the owner of the inheritance, and yet completely consolidated with it, following the inheritance in all the various modifications and changes to which it may be subjected by act of law or arrangements of the owner. The advantage of preserving these terms, and assigning them to trustees (thus preventing the legal presumption of surrender), with an express declaration that they shall attend upon the inheritance is this: If it should at any time appear that prior to the purchase, or mortgage, but posterior to the creation of the term, there had been an intermediate alienation or incumbrance of the fee in favour of another person, to which the then trustee of the term had not been a party, and of which the purchaser or mortgagee had had no notice, when he paid the purchase or mortgage money, he will be protected against it, through the medium of the term so assigned, which being the elder title, will take the priority in point of legal effect. Hence the expression "protecting against mesne (middle) incumbrances." The estate is thus defended from being defeated or injured by such titles or changes, however valid they may be, or by any subsequent disposition of the vendor or mortgagor; it thus conduces to the safety of honest purchasers or mortgagees, to whom it affords a protection not very unlike that of the Registry Acts; whereas, if he neglect to take such assignment, he exposes himself to the risk of some other person (whose title or interest may even be acquired subsequently to his own) obtaining the assignment of the term, and using such benefit to his detriment. Besides, by such assignment, he can in many instances carry back his title to the possession for a much longer period than he can show a clear title to the inheritance, and thus a defective title may be cured. It is sometimes the case, where an assignment of a term has been generally in trust to attend

upon the inheritance, and the old trustees are approved of, and the new purchaser or mortgagee has the possession of all the title deeds, to rely upon a declaration of trust of such term, but this is a dangerous practice, and for this simple reason:—a mere declaration of trust will not protect the inheritance against a subsequent *bonâ fide* purchaser or mortgagee, without notice of it, who procures a proper assignment of the term to his own trustees. As to the point of notice of intermediate incumbrances, it is not necessary that a person should be unaffected with notice, when he procures an assignment of an outstanding term, if he were clear of notice at the time of his purchase, mortgage, or other charge, for equity allows him in such case to avail himself of any protection against defect of title or charge, which he may have subsequently discovered; an outstanding term or legal estate being considered a *tabula in naufragio*, of which the first who acquires it is allowed the full benefit. There are instances, in which a term becomes attendant on the inheritance by equitable construction, the great principle governing which, is that where a legal and equitable estate become vested in the same person, the one a term of years, and the other an estate of inheritance, though there can be no merger (as that can only occur upon the union of two estates of the same nature, *i. e.*, both legal or both equitable, in the same person, in the same right, without any intermediate estate), yet, by analogy to the Common Law doctrine of merger, the term will be considered in equity as attendant, in the absence, of course, of any sufficient indication that the contrary was intended by the parties. For the authorities and arguments upon this important subject, consult *Sugden's Vendors and Purchasers*, tit. *Assignment of Terms*; *Burt. Comp.* 372; *Stephen's Com.*, vol. 1, p. 351; *Sanders on Uses and Trusts*, vol. 1, p. 316; and *Watkins' Prin. of Conv.*, p. 45.

ATTENTATES, proceedings in a court of judicature, pending suit, and after an inhibition is decreed and gone out. Those things which are done after an extra-judicial appeal may be styled *Attentates*. *Ayliffe*.

ATTERMINING, granting time for payment of a debt. *Blount*; 27 *Edw. I.*

ATTESTATION, testimony, evidence, the execution of a deed or will in the presence of witnesses. 2 *Bl. Com.* 307.

ATTILE, the rigging or furniture of a ship. *Fleta*, l. 1, c. 25.

ATTORNARE REM, to turn over money or goods, *i. e.*, to assign or appropriate them to some particular use or service. *Ken. Par. Antiq.* 283.

ATTORNATO FACIENDO VEL RECIPIENDO, an obsolete writ, which commanded a sheriff or steward of a county or hundred court to receive and admit an attorney to appear for the person who owed suit of court. *F. N. B.* 156.

ATTORNEY, one who is appointed by ano-

ther to do anything in his absence, and who has authority to act in the place and stead of him, by whom he is delegated, in private contracts and transactions, which authority must be expressed by deed, commonly called a power of attorney. 1 *Bac. Abr.*, tit. "Attorney."

ATTORNEY AT LAW, a public officer belonging to the Superior Courts of Common Law at Westminster, who conducts legal proceedings on behalf of others, called his clients, by whom he is retained: he answers to the Solicitor in the Courts of Chancery, and the Proctor of the Spiritual or Ecclesiastical Courts. It is a vulgar error (entertained, however, by many) that the term "Solicitor" is more honourable than or superior to "Attorney." The late Lord Tenterden repeatedly animadverted upon the absurdity of using the term "Solicitor," when applied to any one conducting an action or other proceeding in Courts of Law. There is not any distinction whatever in the degree of respectability between them; in fact, the both terms are generally found combined in the same gentleman. Consult *Merrifield's Law of Attornies*; 1 *Chit. Arch.*, tit. "Attornies;" and especially *the Attornies and Solicitors' Act*, 6 & 7 *Vict. c. 73*.

ATTORNEY of the DUCHY COURT of LANCASTER, the second officer in that Court next to the Chancellor, whose assessor he is. *Blount*.

ATTORNEY of the WARDS and LIVERIES was the third officer of the Duchy Court. *Ibid*.

ATTORNEY GENERAL, a great officer of state, made so by letters patent, and the legal representative of the Crown in the Courts of Law and Equity. He exhibits informations, prosecutes for the Crown in criminal matters, files bills in the Exchequer in revenue causes, and informations in Chancery, where the Crown is interested. *Termes de Ley*, 63.

ATTORNMENT [*turner*, Fr., to turn], the acknowledgment of a new lord on the alienation of land, and the assent or agreement of the tenant to attorn, as "I become tenant to the purchaser." *Co. Litt.* 309. It is rendered unnecessary by 4 & 5 *Ann*, c. 16, § 9.

ATTRAPER, taken or seized. *Law Fr. Dictionary*.

ATTREBATH, the ancient name of the inhabitants of Berkshire.

AVAGE, or **AVISAGE**, a rent or payment by tenants of the manor of Writtle, in Essex, upon St. Leonard's day, the 6th of November, for the privilege of pannage in the lord's woods. *Blount*.

AVAIL OF MARRIAGE [*valor maritagi*], the right of marriage, which the lord or guardian in chivalry had of disposing of his infant ward in matrimony. A guardian in socage had also the same right, but not attended with the same advantage. *Stephen's Com.*, vol. 1, p. 185, 196.

AVAL [Fr.], surety for payment.

AU BESOIN [Fr.], in case of need.

DE AUCA, the ancient name of Orve.

AUCTIONARI, sellers, regraters, retailers, more properly brokers. *Jacob*.

AUCTIONEERS, licensed agents appointed to sell property and to conduct sales or auctions. Consult *Sugd. Vend. and Pur.*, vol. 1, for the extent of their power and authority.

The 8 *Vict. c. 15*, repeals the duties of excise on sales by auction, and imposes a new duty on auctioneers' licenses in the United Kingdom. The 1st sec. repeals all existing duties, and a new duty of 10*l.* is imposed on all auctioneers' licenses throughout the kingdom, which are to be renewed annually (§§ 2 & 4). The 6 *Geo. IV.*, c. 81, § 8, is repealed by sec. 6, which substitutes one uniform license. Sec. 7, enacts, that every auctioneer, before he commences any sale, shall affix, in some conspicuous part of the auction room, a ticket or board, containing his full christian and surname and place of residence, otherwise to forfeit 20*l.* He must produce his license on demand, or make a deposit of 10*l.*, on pain of one month's imprisonment.

AUCTION, signifies generally an encreasing, an enhancement, and hence applied to a public sale of property usually conducted by biddings, which augment the price. A spear used to be stuck up by the Romans as the sign of a public auction. *Livy*, xxiii. 37; *Smith's Dict. of Antiq.*

Auctoritates philosophorum, medicorum et poetarum, sunt in causis allegandæ et tenendæ. *Co. Litt.* 264.—(The opinions of philosophers, physicians, and poets, are to be alleged and received in causes.)

Aucupii verborum sunt iudice indigna. *Heb.* 343.—(A twisting of language is unworthy of a judge.)

AUDIENCE COURT, belonging to the Archbishop of Canterbury, having the same authority with the Court of Arches, but inferior to it in dignity and antiquity. The Dean of the Arches is the official auditor of the Audience. The Archbishop of York has also his Audience Court. *Termes de Ley*, 63.

AUDIENDO ET TERMINANDO, a writ or commission to certain persons to appease and punish any insurrection or great riot. *F. N. B.* 110.

AUDIT, a final account. As to the accounts of assignees of bankrupts, it is enacted by 5 & 6 *Vict.*, c. 122, § 27, that it shall be lawful for the Court authorised to act in the prosecution of any fiat in bankruptcy, whenever such Court shall think fit, at or after the sitting appointed for the last examination of the bankrupt named in such fiat, to audit the assignees' accounts, and to make a declaration of dividend under such fiat, subject, nevertheless, to such advertisement, and such other provisions relating to such audits and dividends as are now required in respect of audits and dividends under bankrupts' estates, except such provisions as relate to the limitation of time in any manner

respecting such audits and dividends, or the appointment thereof; but by General Rules and Orders, Nov. 12, 1842, r. 18, no audit and dividend shall be appointed for the same day, except for some special cause to be stated to the Court in writing at the time of such appointment, and allowed.

AUDITA QUERELA (the complaint having been heard), a writ, whereby a defendant against whom judgment is recovered, and who is, therefore, in danger of execution, or perhaps is actually in execution, may be relieved upon good matter of discharge which has happened since judgment, as if the plaintiff had given to him a general release, or the defendant had paid the debt to the plaintiff, without procuring satisfaction to be entered on the record. The indulgence, however, now shown by the Courts in granting summary relief in such cases upon motion has rendered this writ obsolete. For the practice in *audita querela*, consult *Bac. Abr.*; 2 *Sellon*, 253; and 2 *Saund.* 137, e.

AUDITOR, an officer of the Royal household, or of some other great establishment, who examines the accounts of all under officers, and keeps a general book, showing the difference between their receipts and charges and their several allowances, commonly called allocations; as the auditors of the Exchequer take the accounts of the receivers, who collect the revenues. 4 *Inst.* 106. Receivers-general of fee-farm rents, &c., are also termed auditors, and hold their audits for adjusting the accounts at certain times and places. There are also auditors assigned by the Court of Audit, and also to settle accounts in actions of account, &c. 1 *Brown*, 24.

AUDITOR OF THE RECEIPTS, an officer of the Exchequer, who files the tellers' bills, and having made an entry of them, he gives the Lord Treasurer, &c., a weekly account of the money received. 4 *Inst.* 107; 46 *Geo. III.*, c. 1.

AUDITORES [*audientes*], the catechumens, or those newly instructed in the mysteries of the Christian religion before admission to baptism. *Auditorium*, now called the *nave*, is the place in the church where they stand to hear and be instructed. *Blount*.

AUDITORS OF THE IMPREST, officers in the Exchequer, who formerly had the charge of auditing the accounts of the customs, naval and military expences, &c., now performed by the Commissioners for auditing public accounts. *Prac. Exc.* 83.

AVALONIA, the ancient name of Glastonbury, in Somersetshire.

AVANAGE, a certain quantity of oats paid by a tenant to his landlord as a rent or in lieu of some other duties. *Blount*.

AVENOR, an officer belonging to the royal stables, who provided oats for the horses. 13 *Car. II.*, c. 8.

ADVENTURÆ, adventures or trials of skill at arms; military exercises on horseback. *Brady's Append. Hist. Eng.* 250.

ADVENTURE, or **ADVENTURE**, a mischance

causing the death of a man, as where a person is suddenly drowned or killed by any accident, without felony. *Co. Litt.* 391.

AVERA, a day's work of a ploughman, formerly valued at 8d. *Domesday Book*.

AVERAGE, a medium, a mean proportion, used in five senses:—

1. A service which a tenant owes to his lord by horse or carriage.

2. A contribution, which merchants and others make towards their losses, who have their goods cast into the sea, for the safety of a ship, or of the other goods and lives of persons during a tempest. It is apportioned and allotted after the rate of every man's goods carried. So if a ship or goods insured for a voyage reach their destination, but are in some degree injured by any of the accidents insured against, this is an *average loss*, and the insurers are bound to compensate the insured in the proportion which the average loss bears to the whole insurance. *Park on Insurance*.

3. Also a small duty paid to masters of ships, when goods are sent in another man's ship, for their care of the goods over and above the freight. *Sel. Nisi Prius*, 844.

4. Stubble, or remainder of straw and grass left in corn fields after harvest. In Kent it is called *gratten*, and in other parts *roughings*.

5. Average prices, such as are computed on all the prices of any article sold within a certain period or district.

A verbis legis non est recedendum. 5 *Co.* 118. —(From the words of the law there is not any departure.)

This maxim directs the construction put upon Acts of Parliament, against the express letter of which the Courts will not sanction any interpretation, for the meaning of the Legislature cannot be so well explained as by its own direct words, since *index animi sermo* (language conveys the intention of the mind), and *maledicta expositio quæ corrumpit textum*, (an exposition which corrupts the text is bad). 4 *Co.* 35.

AVER CORN, a reserved rent in corn paid to religious houses. *Blount*.

AVER LAND, that which tenants ploughed and manured for the proper use of a monastery or the Lords of the soil. *Mon. Angl.*

AVER PENNY (or *average penny*), money paid towards the king's averages or carriages, or to be freed thereof. *Rastal*.

AVER SILVER, a custom or rent formerly so called. *Cowel*.

AVERIA, cattle. *Spelman*.

AVERIA CARUCÆ, beasts of the plough.

AVERIA ELONGATA, cattle eloigned, i. e., carried off.

AVERUS CAPTIS IN WITHERNAM, a writ for the taking of cattle to his use, who has cattle unlawfully distrained by another and driven out of the county, where they were taken, so that they cannot be replevied by the sheriff. *Reg. Orig.* 82.

AVERIUM, the best live beast due to the lord

as an heriot on his tenant's death. 2 Bl. Com. 424.

AVERMENT, an advancement or affirmation of any new matter in a pleading, and when new matter is introduced the pleading should always conclude with a verification, except in the anomalous case of the general plea of policy under 6 Geo. 4, c. 16. Verifications or averments are of two kinds:—*common* and *special*. Common are applied to ordinary cases, and is in the following form:—"And this the plaintiff (or defendant) is ready to verify." Special are used where the matter pleaded is intended to be tried by record or by some other method than a jury. They are in the following forms:—"And this the plaintiff (or defendant) is ready to verify by the said record," or, "And this the plaintiff (or defendant) is ready to verify, when, where, and in such manner as the Court here shall order, direct, or appoint." Consult *Stephen's Pleading* as to the origin of this rule, &c., p. 479.

AVERRARE, a duty required from some customary tenants, to carry goods in a waggon or upon loaded horses. *Blount*.

AVETTING (or abetting), helping or assisting. *Scotch Law*.

AUGEA, a cistern for water. *Blount*.

AUGMENTATION, the name of a court (now abolished), erected 27 Hen. VIII., to determine suits and controversies relating to monasteries and abbey lands. *Termes de Ley*, 68.

AUGMENTATION OF STIPENDS. In order to secure a better provision for the reformed clergy of the church of Scotland, the Court of Sessions has power to modify or increase stipends to the clergy out of the teinds of the parish in which the minister officiates. *Scotch Law*.

AUGUSTA, the ancient name of London.

Augusta legibus soluta non est.—(The Queen is not exempted from the laws.)

A VINCULO MATRIMONII (from the bond of marriage). It is a total divorce obtained from the Ecclesiastical Court, on some canonical impediment existing *before* marriage and not arising *afterwards*, for the marriage is declared void, as having been absolutely unlawful *ab initio*, and the parties are, therefore, separated, *pro salute animarum* (for the safety of their souls), the issue (if any) are bastards, and the parties may contract another marriage.

Though this divorce cannot be obtained in the regular course of law, on the ground of adultery, yet it is frequently granted on that ground by a private Act of Parliament; it having become the practice of the Legislature to exercise its authority in this matter by way of extraordinary relief to the injured party. The proceeding originates in the House of Lords, and to prevent collusion the petitioner for a divorce bill must attend upon its second reading, to be examined at the Bar, the adultery being proved by witnesses. Evidence must also be given in the committee on the bill, that a sentence of divorce has been obtained in the Spiritual Court, and (where the husband is the petitioner) that

judgment has been given for the husband in some Court of Law, in an action for damages brought by him against the seducer. Where no such proceedings have taken place, Parliament requires some satisfactory reason to be given for the omission, as that the husband has been unable to discover the adulterer, or that he died before a verdict could be obtained against him. In passing the bill, the Legislature usually makes some provision for the wife out of the husband's estate. *Stephen's Com.*, Vol. II. 313.

AVISAMENTUM, advice or counsel. *Blount*.

AVITOUS [*avitus*, Lat.], left by a person's ancestors.

AULA, a Court Baron. *Watkins on Copyholds*.
DE AULA, Hall.

AULA REGIS, a court established by William the Conqueror in his own hall: it was composed of the great officers of state, resident in the palace, and followed the King's household in all his expeditions. The trial of common causes in it was, on this account, very burthensome to the people, and accordingly the 11th chapter of *Magna Carta* thus enacted:—"communia placita non sequantur curiam regis sed teneantur in aliquo certo loco." This certain place was established in Westminster Hall, where it has ever since continued under the name of the Court of Common Pleas, or Common Bench. *Brac. L. 3, tr. 1, c. 7*; 3 Bl. Com. 39.

AULA ECCLESIAE, a nave or body of a church where temporal courts were anciently held. *Eadm. l. 6, p. 141*.

AULNEGER [*ulna*, an ell], an ancient officer appointed by the king, whose business it was to measure all cloth made for sale, that the Crown might not be defrauded of customs and duties. *Termes de Ley*, 37.

AUMONE, *service in*, where lands are given in alms to some church or religious house, upon condition that a service or prayers shall be offered at certain times for the repose of the donor's soul. *Brit.* 164.

AUNCCEL WEIGHT, an ancient manner of weighing by the hanging of scales or hooks at either end of a beam or staff, which, by lifting up in the middle discovered the equality or difference between the weight at one end and the thing weighed at the other. This weighing being subject to great deceit, was prohibited and the even balance commanded in its stead. But, notwithstanding, it is still used in some parts of England, and what are now called *stilliards*, which shows the pounds by certain notches on a beam, is very similar to the *uncel weight*. *Termes de Ley*, 66.

AUNCIATUS, antiquated. *Blount*.

AVOIDANCE, when a benefice is void of an incumbent, in which sense it is opposed to plenarty. *Jacob*.

AVOIRDUPOIS, or **AVERDUPOIS** (to have full weight), a certain method of weighing goods, allowing 16 ounces to the pound, while Troy weight allows but 12.

AVONA, the ancient name of Bungay, in Suffolk, and Hampton Court.

AVONÆ VALLIS, the ancient name of Avondale, or Oundale, in Northamptonshire.

AVOW, see ADVOW.

AVOWEE, see ADVOWEE.

AVOWRY, see ADVOWRY.

AVOWTERER, an adulterer. The crime is called *Avowtry*.

AURENEY, AURNEY, AURIGNEY, the ancient name of Alderney, an island in the English Channel.

DE AUREO VADO, the ancient name of Guldeford, or Guilford, in Surry.

AURES, a Saxon punishment by cutting off the ears, inflicted on those who robbed churches, or were guilty of any other theft. *Fleta*, l. 1, c. 38, par. 10.

AURICULARIUS, a secretary. *Mon. Ang.* 120.

AURUM REGINÆ, Queen's gold. A royal revenue, belonging to every Queen Consort during her marriage with the King, and due from every person who has made a voluntary offering or fine to the King, amounting to ten marks or upwards, for and in consideration of any privileges, grants, licenses, pardons, or other matters of royal favour conferred upon him by the King, and it is due in the proportion of one-tenth part more over and above the entire offering or fine made to the King, and becomes an actual debt of record to the Queen's majesty by the mere recording of the fine. *Stephen's Com.*, vol. 2, p. 467.

AUSCULTARE, to hear monks read and to direct them how and in what manner they should do it with a graceful tone of accent to make an impression on their hearers, which was required before they were admitted to read publicly in the church.

AUSTURCUS, and OSURCUS, a goshawk, whence a falconer, keeping such kind of hawks is called *ostringer*. *Unum austurcum* used to be reserved as a rent to the lord, and may be seen in some ancient deeds. *Blount*.

AUTER ACTION PENDANT, another action pending.

AUTER DROIT, in right of another, *ex. gra.*, a trustee holds trust property in right of his *cestui que trust*. A *prochein amy* sues in right of an infant. 2 *Bl. Com.* 176.

AUTREFOIS ACQUIT (formerly acquitted), a plea in criminal cases, when a person is indicted for an offence and acquitted, he cannot be afterwards indicted for the same offence, provided the first indictment were such that he would have been lawfully convicted on it; and, if he be thus indicted a second time, he may plead *autrefois acquit*, which will be a good bar to the indictment. The true test, by which the question, whether such a plea is a sufficient bar in any particular case, may be tried, is, whether the evidence necessary to support the second indictment would have been sufficient to procure a legal conviction upon the first. *R. v. Emden*, 9 *East*, 437.

AUTREFOIS ATTAINT (formerly attainted), another plea in criminal cases. Before 7 & 8 Geo. IV., c. 28, § 4, if a man

were attainted of treason or felony, whilst the attainder remained in force, he could not, with certain exceptions, be indicted for another felony, whether such other felony were committed before or after his attainder; because, being already attainted, and, therefore, dead in contemplation of law, and his property forfeited, a prosecution for any other offence was considered useless. But now attainder is no bar, unless for the same offence as that charged in the indictment, and in effect this plea is at an end. 4 *Bl. Com.* 337.

AUTREFOIS CONVICT (formerly convicted). Before 6 Geo. IV., c. 25, a man convicted of a clergyable felony, and who had prayed the benefit of clergy, might plead such conviction and prayer of clergy in bar of any subsequent indictment, either for the felony of which he was convicted or for any other clergyable felony committed by him previously to his conviction. This statute restricted the benefit of the allowance of clergy to the individual charge upon which it was allowed, and now a previous conviction can only be pleaded in bar of any subsequent indictment for the felony of which the defendant has previously been convicted. The 7 & 8 Geo. IV., c. 28, § 6, abolished the benefit of clergy in all cases of felony, and the 4th section seems to put an end to this plea.

AUTRE VIE, *tenant pour* (tenant for another's life). An estate for the life of another is an estate of freehold, though it is the lowest or least estate of freehold, which the law acknowledges. An estate for the life of another is not so great as an estate for one's own life. Read the 4th chap. of *Watkins' Principles of Conveyances*.

AUTHORITY, a power to do something given by one man to another. Consult *Vin. Abr.*, tit. "*Authority*," and *Sugden on Powers*.

AVERMENT [*verificatio*], to avouch or verify the matter in hand. It is twofold:—1. *General*, which is the conclusion of every plea to the writ, or in bar of replications and other pleadings, containing matter affirmative and ought to be averred, "and this he is ready to verify." 2. *Particular*, as when the life of tenant for life, or tenant in tail, is averred, and there, though the word *verify* be not used, but the matter avouched and affirmed, it is upon the matter an averment. 1 *Inst.* 362.

AVULSION, lands torn off by an inundation or current from property to which they originally belonged and gained to the estate of another; or where a river changes its course, and instead of continuing to flow between two properties, cuts off part of one and joins it to the other property. The property of the part thus separated continues in the original proprietor, in which respect *avulsion* differs from *alluvion*, by which an addition is insensibly made to a property by the gradual washing down of the river, and which addition becomes the property of the owner of the lands to which the addition is made.

AVUNCULUS, an uncle by the mother's side.

AVUS, a grandfather.

AUXILIUM AD FILIUM MILITEM FACIENDUM ET FILIAM MARITANDAM.

An ancient writ which was addressed to the sheriff to levy an aid towards the knighting of a son and the marrying of a daughter. Abolished.

AUXILIUM CURIÆ, a precept or order of Court citing and convening a party, at the suit and request of another, to warrant something. *Ken. Paroch. Antiq.* 477.

AUXILIUM FACERE ALCUI IN CURIA REGIS, to become another's friend or solicitor in the Queen's Courts, an office undertaken for and granted by some courtiers to their dependents in the country. *Ibid.* 126.

AUXILIUM REGIS, the King's aid or money levied for the royal use and the public service, as taxes granted by Parliament. 1 *Bl. Com. c. VIII.*

AUXILIUM VICECOMITI, a customary aid or duty anciently payable to sheriffs out of certain manors, for the better support of their offices. *Mon. Angl.*

AWAIT, waylaying, a lying in wait to execute some mischief. 13 *Ric. II., st. 2.*

AWARD, a judgment or arbitration of one or more persons called arbitrators, at the request of two parties who are at variance, for ending a matter in dispute, independently of the process of the Courts, and frequently without the intervention of public authority. The award is in writing and engrossed on a 35s. stamp, or if it contain thirty folios of seventy-two words each or upwards, there must be an additional stamp of 25s. for every full fifteen folios beyond the first fifteen. A duplicate copy of the award (unstamped) is made, and the parties then have notice that the award is ready to be delivered upon payment of the arbitrators' charges; which notification is publication of the award. Great care should be observed in preparing an award, as after it is published and delivered, the arbitrator is *functus officio*, (discharged from the duty) and has no authority to rectify or alter it. There is no precise form of words necessary for an award. *Bayley's Practice*, p. 406; *Chitty's Arch., Book IV., part II.; Watson's Arbitration and Award.*

AWAY-GOING CROPS, those sown during the last year of a tenancy, but not ripe until after the expiration of it. The right which an outgoing tenant has to take an away-going crop is sometimes given to him by the express terms of the contract, but where that is not the case, he is generally entitled to do so by the custom of the county: such custom or usage has been held reasonable and valid, and to apply equally to tenants by parol agreement and by deed or written contract of demise, and this for the benefit and encouragement of agriculture. For the custom of the various counties in England, respecting the most important of the rights and liabilities which exist between an out-

going and incoming tenant, consult *the Table of Customs given in Woodfall's Land. and Tent.* by Harrison, p. 513.

AWEN, or **AUME**, a measure of Rhenish wine containing forty gallons, mentioned in some statutes. *Blount.*

AWNHNDE, see **THIRD-NIGHT AWNHNDE.**

AXELODUNUM, the ancient name of Hexam, in the Bishopric of Durham.

AYLE [*De avo*, of a grandfather], see **AIEL.**

AZALDUS, a poor horse or jade. *Blount.*

B.

BACA, an iron hook, a line with a hook at the end of it. *Old Records.*

BACCINIUM, or **BACINA**, a bason or vessel to hold water for washing the hands. There was formerly a service of holding the bason, or waiting at the bason, on the day of the King's coronation.

BACHELACANÆ SYLVÆ, the ancient name for the woods of Bagley.

BACHELERIA, commonalty or yeomanry, in contradistinguishment to baronage. *Old Records.*

BACHELOR [a word of uncertain etymology, *Junius* derives it from *βάκλος*, Gk., foolish, whence the Italian, *Baccalare*, a coxcomb; *Menage*, from *bas chevalier*, Fr., a knight of the lowest rank; *Spelman*, from *baculus*, Lat., a staff; *Cujas*, from *buccella*, an allowance of provision; but the most probable derivation seems to be from *bacca-laurus*, Lat., the berry of a laurel or bay, because anciently bachelors had their heads adorned with a garland of bay berries]. A man who takes his first degree at the Universities, introduced in the 13th century by Pope Gregory IX. *Encyc. Lond.*

BACKBERINDE, **BACKVERINDE**, or **BACKBEREND**, bearing upon the back or about a man. Where a thief is apprehended with the things stolen in his possession, also called being taken with the *mainour*, as having the goods in his hand. 2 *Inst.* 188. It was one of the four circumstances wherein a forester might have arrested the body of a trespasser in a forest; viz., *dog-draw*, i. e., drawing after a deer that he has hurt; *stable-stand*, i. e., at his standing with a knife, gun, bow, or greyhound, ready to shoot or course; *back-berend*, i. e., carrying away upon his back the deer which he had killed; *bloody-hand*, i. e., when he had shot or coursed, and was imbrued with blood. 4 *Inst.* 294.

BACK-BOND, a deed, which in conjunction with an absolute disposition constitutes a trust. It expresses the nature of the right actually had by a person to whom the disposition is made. It is equivalent to the English deed of declaration of trust. *Scotch Term.*

BACKING a warrant of a justice of the peace. Where a warrant which has been granted in one jurisdiction is required to be executed in another, as where a felony has

been committed in one county and the offender is lurking in another county, then, on proof of the handwriting of the justice who granted the warrant, a justice in such other county endorses or writes his name on the back of it, and then gives authority to execute the warrant in such other county. 23 *Geo. II.*, c. 26; 24 *Geo. II.*, c. 55; 13 *Geo. III.*, c. 31; 44 *Geo. III.*, c. 92.

BACKSIDE, a term formerly used in conveyances and even in pleadings, and is still adhered to with reference to ancient descriptions in deeds, in continuing the transfers of the same properties; it imports a yard at the back part of or behind a house, and belonging thereto; but though formerly used in pleading, it is now unusual to adopt it, for the word "yard" is preferred. *Chit. & Gen. Prac.*, vol. 1, 177; *Exodus*, c. 3, v. 1.

BACO, a bacon hog, used in old charters.

BADGE [from *bode* or *bade*, a messenger, corrupted from *badage*, the credential of a messenger, *Junius*; or from *bagge*, Dut., a jewel; or *bague*, Fr., a ring. *Skinner and Minshew*; it seems to come from *bajulo*, Lat., to carry]. A mark or cognizance worn to shew the relation of the wearer to any person or thing; the token of any thing. *Encyc. Lond.*

BADGER [*baggage*, Fr., a bundle, whence *bagagier*, a carrier of goods]. A person who buys corn or victuals in one place, and carries them to another to sell and make profit by them. The 5 *Eliz.* c. 12, empowered magistrates to license badgers for one year, upon their entering into certain recognizances. The 7 & 8 *Vict.* c. 24, utterly took away and abolished the offence of badgering, and repealed the Statutes passed in relation to it, as being pernicious and in restraint of trade.

BADIZA, an ancient name of Bath, in Somersetshire.

BADONICUS MONS, the ancient name of Barnes Down, near Bath.

B.EDLING (*Mollis*), "Molles (inquit Alcuinus de offic. Divin.), sunt effeminati, qui vel barbas non habent, sive qui alterius fornicationem sustinent." These are the *μαλακοὶ* mentioned by St. Paul, 1 *Corinth.* vi. 9, *ὅτι μαλακοὶ ὅτι ἀρσενοκοῖται*, κ. τ. λ. The derivation of the Saxon term is very uncertain. *Theod. Lib. Pœnit.* xxxviii. 3; *Ecgb. Pœnit.* iv. 68; *Ant. Laws of England*.

BAG, an uncertain quantity of goods and merchandize, from 3 to 400. *Lex Mercatoria*.

BAGA, a bag or purse. Thus there is the Petty Bag Office in the Common Law Jurisdiction of the Court of Chancery, because all original writs relating to the business of the Crown were formerly kept in a little sack or bag in *parva baga*. *Madd. Prin. Chan.*, vol. i, p. 4.

BAGGAVEL, Edward 1st granted to the citizens of Exeter, by charter, the collection of a certain tribute or toll upon all manner of wares brought to that city to be sold, to be applied towards the paving of the streets, repairing the walls, and maintaining the city,

which was commonly called in old English, *begavel*, *bethugavel*, and *chipping-gavel*. *Antiq. of Exeter*.

BAHADUM, a chest or coffer. *Fleta*, l. 2, c. 21.

BAJARDOUR, a bearer of any weight or burden. *Old Records*.

BAIL [*βάλλω*, Gk., to deliver into hands]. To set at liberty a person arrested or imprisoned, on security being taken for his appearance on a day and at a place certain, which security is called bail, because the party arrested or imprisoned is delivered into the hands of those who bind themselves for his forthcoming, in order that he may be safely protected from prison. Bail and mainpernors are often confounded, but there is this marked distinction between them:—*mainpernors* are merely a person's sureties who cannot imprison him themselves to secure his appearance, but *bail* may, for they are regarded as his gaolers, to whose custody he is committed, and, therefore, they may take him upon a *Sunday* and confine him until the next day, and then render him to the proper prison. The word "bail" is never used with a plural termination.

There are several kinds of bail at Common Law, as follow:—

1. Common bail, or bail below, is given to the sheriff, after arresting a person, on a bail-bond, entered into by two sureties, on condition that the defendant appear at the day and in such place as the arresting process commands.

2. Special bail, or bail above, or bail to the action, are persons who undertake generally that if the defendant be condemned in the action, he shall satisfy the debt, costs, and damages, or render himself to the proper prison, or that they will do it for him.

3. Bail in error: when the judgment in the original action was for the plaintiff below, the plaintiff in error must put in and perfect bail, in order that the writ of error should operate as a *supersedeas* of execution, unless the Court or a Judge order otherwise, but if the plaintiff in the original action happen to be the plaintiff in error, then bail is not necessary. The recognizance of bail in error is conditioned, not alternatively, to pay or to render the principal, but if the judgment should be affirmed, or the writ of error *non-prossed*, to pay the amount adjudged upon the former judgment, together with the costs and damages. Bail in error, then, unlike any other bail, cannot render their principal in discharge of liability, but must, in the event of his not paying, pay the amount recovered with costs.

4. Bail on an attachment. When a defendant is arrested upon a writ of attachment, he is brought before a Court or a Judge and sworn to answer interrogatories, and then committed, unless by leave of a Court or a Judge, he enter into a recognizance with sureties, for his appearance in Court from day to day, to answer interrogatories concerning such matters as may be objected against him.

An attachment for non-payment of money or non-performance of an award is not bailable.

5. Bail upon outlawry on *mesne* process. The defendant may give bail as in ordinary cases, but if he be arrested upon outlawry on *final* process, it is not bailable.

In the Court of Chancery, there is equitable bail given by a defendant upon his being arrested on a writ of *ne exeat regno*, and the sheriff might take bail in cases of attachment for not appearing or answering.

In criminal matters, the offence of treason is not bailable. But in cases of felony, the 7 Geo. IV., c. 64, § 1, enacts, that where any person shall be taken on a charge of felony, or suspicion of felony, before justices of the peace, and the charge shall be supported by positive and credible evidence of the fact, or by such evidence as, if not explained or contradicted, shall, in their opinion, raise a strong presumption of the guilt of the person charged, such person shall be duly committed to prison, but if there shall be only one justice present, and the whole evidence given before him shall be such as neither to raise a strong presumption of guilt, nor to warrant the dismissal of the charge, such justice shall order the person charged to be detained in custody, to be taken before two justices at least; and where any person so taken, or any person in the first instance taken before two justices, shall be charged with felony, or on suspicion of felony, and the evidence given in support of the charge shall, in their opinion, not be such as to raise a strong presumption of the guilt of the person charged, and to require committal, or such evidence shall be adduced on behalf of the person charged, as shall, in their opinion, weaken the presumption of guilt, but there shall, notwithstanding, appear to them, in either of such cases, to be sufficient ground for judicial enquiry, the person charged shall be admitted to bail by such two justices in the manner thereafter mentioned; provided always, that nothing therein contained shall be construed to require justices to hear evidence on behalf of any person charged, unless it should appear conducive to the ends of justice. The 5 & 6 Wm. IV., c. 38, § 3, amended and extended the provisions of the above named act, and enacts, "that it shall be lawful for any two justices of the peace, if they shall think fit, of whom one or other shall have signed the warrant of commitment, to admit any person or persons charged with felony, or against whom any warrant of commitment for felony is signed, to bail, in the manner and according to the provisions directed by the said recited and above mentioned act, in such sum or sums of money, and with such surety or sureties as they shall think fit, and notwithstanding such person or persons shall have confessed the matter laid to his or their charge, or notwithstanding such justices shall not think that such charge is groundless, or shall think that the circumstances are such as to raise a pre-

sumption of guilt." It is discretionary, however, in the Court of Queen's Bench, or any Judge of it in vacation, to bail for any crime whatever, be it treason, murder, or any other offence, according to the circumstances of the case.

BAIL-BOND, an instrument prepared in the sheriff's office after an arrest, executed by two sufficient sureties and the person arrested, and conditioned for his causing special bail to be put in for him in the Court out of which the arresting process issued. *Bagley's Prac.* 357.

BAILABLE, an arresting process is said to be bailable when bail can be given, and the person arrested may obtain his liberty in consequence, *e. g.*, a *capias* on *mesne* process is bailable; a *capias ad satisfaciendum* is non-bailable.

BAILEE, a person to whom goods are intrusted for a specific purpose.

BAILIES, magistrates of burghs, possessed of certain jurisdictions and having the same powers within them as sheriffs of counties. Also officers or persons named by proprietors to give infeffment. *Scotch Law.*

BAILIFF, a keeper or protector, an officer who puts in force an arresting process, a land steward. There are several kinds of bailiffs, whose offices and employments greatly differ from one another, yet they agree in that the keeping or protection of something belongs to them all. *Encyc. Lond.*

BAILIS, letters to raise fire and sword. *Scotch Law.*

BAILIWICK [*bailli*, Fr., and *wic*, Sax.], the jurisdiction of a bailiff. A county. A liberty exempted from a sheriff, over which a bailiff is appointed by the lord of the liberty or franchise, with such powers within his precinct as an under-sheriff exercises under a sheriff. *Wood's Inst.* 206.

BAILMENT [*bailler*, Fr., to deliver], a compendious expression to signify a contract resulting from delivery. Sir William Jones has defined bailment to be "a delivery of goods on a condition, express or implied, that they shall be restored by the bailee to the bailor, or according to his directions, as soon as the purpose for which they are bailed shall be answered." He has again, in the closing summary of his essay, defined it in language somewhat different, as, "A delivery of goods in trust, on a contract expressed or implied, that the trust shall be duly executed and the goods re-delivered, as soon as the time or use for which they were bailed shall have elapsed or be performed." Each of these definitions seems redundant and inaccurate, if it be the proper office of a definition to include those things only which belong to the genus or class. Both of these definitions suppose that the goods are to be restored or re-delivered. But in a bailment for sale, as in the case of a consignment to a factor, no re-delivery is contemplated between the parties. In some cases, no use is contemplated by the bailee; in others, it is of the essence of the contract;

in some cases, time is material to terminate the contract; in others, time is necessary to give a new accessorial right. Mr. Justice Blackstone has defined a bailment to be "a delivery of goods in trust, upon a contract expressed or implied, that the trust shall be faithfully executed on the part of the bailee;" and in another place, as a "delivery of goods to another person for a particular use." It may perhaps be doubted, whether (although generally true) a faithful execution (if by faithful be meant a conscientious diligence or faithfulness, adequate to a due execution) or a particular use (if by use be meant an actual right of user by the bailee), constitutes an essential or proper ingredient in all cases of bailment. Mr. Chancellor Kent, in his Commentaries, has blended, in some measure, the definitions of Jones and Blackstone. Without professing to enter into a minute criticism, it may be said, that a bailment is a delivery of a thing in trust for some special object or purpose, and upon a contract, express or implied, to conform to the object or purpose of the trust.

Bailments are properly divisible into three kinds. 1. Those in which the trust is exclusively for the benefit of the bailor, or of a third person. 2. Those in which the trust is exclusively for the benefit of the bailee; and 3. Those in which the trust is for the benefit of both parties, or of both or one of them, and a third party. The first embraces deposits and mandates; the second gratuitous loans for use; and the third, pledges or pawns, and hiring and letting to hire. *Story's Bailments*, 1.

BAILOR, or BAILER, a person who commits goods to another party (the bailee) in trust for a specific purpose.

BAIL-PIECE, a piece of parchment containing the names of special bail, with other particulars, which, being signed by a Judge, is filed in the Court in which the action is pending, and notice of the bail having justified is then given to the opposite party. *Bayley's Prac.* 361.

BAIR-MAN, a poor insolvent debtor, left bare and naked, who was obliged to swear in Court that he was not worth more than five shillings and five pence. *Obsolete*.

BAIRNS' PART, a third part of a defunct's free moveables, debts deducted, if his wife survive, and a half if there be no relict, due to his children. *Scotch Law*.

BALANCE, that which expresses the difference between the debtor and creditor sides of an account; also used commercially to express the difference between the value of the exports from and imports into a country. The balance is said to be favourable, when the value of the exports exceeds that of the imports, and unfavourable when the value of the imports exceeds that of the exports. *McCulloch's Comm. Dict.*

BALCANIFER, or BALDAKINIFER, a standard bearer.

BALCONIES, small galleries of wood or stone on the outside of houses. They are regulated

in London by the Building Act, 14 Geo. III., c. 78, § 48.

BALE, a pack or certain quantity of goods or merchandize, wrapped or packed up in cloth and corded round very tight, marked and numbered with figures corresponding to those in the bills of lading, for the purpose of identification.

BALENGER, a barge or water-vessel, a man-of-war.

BALEUGA, a territory or precinct.

BALISTARIUS, a balister or cross-bow man.

BALISTICS, the science of throwing missive weapons by means of an engine.

BALK [*valicare*, Ital., to pass over, *Skinner*], a ridge of land left unploughed between the furrows or at the end of a field. *Encyc. Lond.*

BALLIERS, persons, who, standing on a balk or ridge of ground, give notice of something to others.

BALLARE, to dance.

BALLIVA, a bailiwick or jurisdiction. *Old Records*.

BALLIVO AMOVENDO, an ancient writ to remove a bailiff from his office for want of sufficient land in the bailiwick. *Reg. Orig.* 78.

BALLOT [*ballotte*, Fr.], a little ball or ticket used in giving votes.

BALLOT, to vote for or choose a person into an office by means of little balls of several colours, which are put into a box privately, according to the inclination of the chooser or voter, or by writing the name or names of the candidates upon small pieces of paper and rolling them up, so that they cannot be read, which are put into a box, and when the time limited for the election is over, an indifferent person takes them out one by one and upon reading the name or names, somebody takes down the number of votes, the greater of which is declared duly elected.

BALLOT-BOX, a case made of wood for receiving ballots.

BAN, or BANS [*Teut.*], a proclamation or public notice, any public summons or edict, whereby a thing is commanded or forbidden. It is most especially used in the publication of intended marriages, which must be done on three several Sundays, immediately after the second lesson, previous to the marriage, to the end that if any can shew just cause against such marriage, they may have opportunity to make their objections. But the Spiritual Judge, by a license, may dispense with the formality of publication. If any persons be married without either publication of bans or license, the marriage will be void, and the officiating minister transported. 26 Geo. II., c. 33.

BANCO [Ital.], a commercial term, used to distinguish bank money from the common currency; also, a seat or bench of judgment.

BANCALE, a covering of ease or ornament for a bench or other seat.

BANDIT, a man outlawed.

BANE [*Bana*, Sax., a murderer], destruction, overthrow. "I will be the bane of such a

person" is a popular saying. When a person receives a mortal injury by any thing, such thing is his *bane*. He who is the cause of another's death, is *le bane*, i. e., malefactor.

BANERET, or **BANNERET**, a knight made in the field, by the ceremony of cutting off the point of his standard, and making it, as it were, a banner, it is accounted so honourable that they are allowed to display their arms in the royal army, as barons do, and may bear arms with supporters. They rank next to barons.

BANISHMENT, a forsaking or quitting the realm; a kind of civil death inflicted on an offender. It is of two kinds:—one, voluntary and upon oath, called abjuration, the other, upon compulsion for some offence. For the Greek and Roman Laws on this subject, consult *Smith's Dict. of Antiq.*, tit. "*Banishment*."

BANK [*bancus*, Lat.], a seat or bench of justice. Thus, *Bancus Regine*, or *Bank la Reine*, is the Queen's Bench. *Bancus Communium Placitorum*, or *Bench le Common Pleas*, is the Court of Common Pleas, or the Common Bench. Commercially, it is a place where money is deposited, for the purpose of being let out to interest, returned by exchange, disposed of to profit, or to be drawn out again as the owners shall call for it.

The three great national banks are, 1, the Bank of England, regulated by 3 & 4 Wm. IV., c. 98. The Bank of England conducts the whole banking business of the British Government. It acts not only as an ordinary bank, but as a great engine of state. It receives and pays the greater part of the annuities which are due to the creditors of the public; it circulates Exchequer bills, and it advances to Government the annual amount of the land and malt taxes, which are frequently not paid till some years thereafter. 2, The Bank of Scotland, established by Wm. III., Parl. 1, § 5; 44 Geo. III., c. 23; 9 Geo. IV., c. 65. 3, The Bank of Ireland. *McCulloch's Comm. Dict.*

BANK-CREDITS, accommodations allowed to a person, on proper security given to a bank, to draw money on it to a certain extent agreed upon.

BANK-NOTES, or **BANK-BILLS**, written or printed promises for money, to be paid by a banking company. They are uniformly made payable on demand. They are not like bills of exchange, mere securities or documents for debt, nor are they so esteemed, but treated as money in the ordinary course and transactions of business by the general consent of mankind, and on payment of them, whenever a receipt is required, it is always given as for money, not as for securities or notes. *Per Lord Mansfield, Miller v. Race*, 1 Burr. 457. *Bank of England notes* were made a legal tender by the 5th sec. of 3 & 4 Wm. IV., c. 98, every where, except at the Bank and its branches, for all sums above five pounds.

BANKABLE, discountable, receivable at a bank, as bills of exchange, &c.

BANKER, one who receives money in trust to be drawn again as the owners have occasion for it.

BANKERS' CASH NOTES, formerly called goldsmiths' notes, because bankers were originally goldsmiths. Written promises given by bankers to their customers as acknowledgments of having received money for their use. They are payable to bearer on demand and considered as money, and transferable from one person to another by delivery. They are now seldom made except by country bankers, their use having been superseded by the introduction of checks.

BANKERS' CHECKS, or **DRAFTS**, written orders or requests, addressed to persons carrying on the business of bankers, and drawn upon them by a party having money in their hands, requesting them to pay on presentment to a person therein named, or to bearer, a certain sum of money. On account of the daily and immense use of checks, the Legislature has exempted them from stamp duties, provided they be for the payment of money to the bearer on demand and drawn upon a banker or person acting as such, residing or transacting the business of a banker, within ten miles of the place where such draft or order shall be issued, and provided also, that such place be specified in such draft or order, and that the same bear date on or before the day the same shall be issued, and do not direct the payment to be made by bills or promissory notes, 55 Geo. III., c. 184.

BANKING, a trading in money.

BANKRUPT [derived from *bancus*, or *banque*, the table or counter of a tradesman, and *raptus*, Lat., broken, denoting thereby one whose shop or place of trade is broken and gone]. A trader who secretes himself or does certain other acts, tending to defeat or delay his creditors.

By 6 Geo. IV., c. 64, § 2, it is enacted, that all bankers, brokers, scriveners, underwriters, warehousemen, wharfingers, packers, builders, carpenters, shipwrights, victuallers, keepers of inns, taverns, hotels, and coffee houses, dyers, printers, bleachers, fullers, calenderers, cattle or sheep salesman, and all persons using the trade of merchandize by way of bargaining, exchange, bartering, commission, consignment, or otherwise, in gross or by retail, and all persons, who, either for themselves, or as agents or factors for others, seek their living by buying and selling, or by buying and letting for hire, or by the workmanship of goods and commodities, shall be deemed traders liable to become bankrupts. Provided that no farmer, grazier, common labourer, or workman for hire, receiver-general of the taxes, or member of or subscriber to any incorporated, commercial, or trading companies established by charter or Act of Parliament, shall be deemed as such a trader, liable, by virtue of this act, to become bankrupt. By 5 & 6 Vict., c. 122, § 10, it is enacted, that all livery stable keepers, coach proprietors, carriers, shipowners, auctioneers, apothecaries, market gardeners, cowkeepers,

brickmakers, alum-makers, lime-burners, and millers, shall be liable to be made bankrupts.

The liability extends to aliens, denizens, women, and married women whose trades are not under their husbands' control. Also to infants holding themselves out as adults, to executors and trustees carrying on the business of the persons they represent; peers, members of parliament, clergymen, smugglers, and those who have retired from business in respect of debts contracted during their trading.

The bankrupt law, the administration of which belongs to the statutory jurisdiction of the Court of Chancery, is a system of positive statute regulations, its character being peculiar and anomalous and designed for the special benefit of a particular class of persons with whom debts are contracted in the course of trade. It is distinguished from the ordinary law between debtor and creditor, as involving these three general principles:—1, a summary and immediate seizure of all the debtor's property; 2, a distribution of it among the creditors in general, instead of merely applying a portion of it to the payment of the individual complainant, and, 3, the discharge of the debtor from future liability for the debts then existing. Consult *Stephen's Com.*, vol. 2, p. 189; *Smith's Mercantile Law*, tit. "Bankruptcy;" *Montagu & Ayrton's Law and Practice in Bankruptcy*, by Koe and Miller; and *Flather's Archbold's Bankruptcy*.

The execrable atrocity of the early Roman law with respect to bankruptcy is well known. According to the usual interpretation of the law of the twelve tables, which Cicero has so much eulogised (*De Orat.*, l. 1), the creditors of an insolvent debtor might, after some preliminary formalities, cut his body to pieces, each of them taking a share proportioned to the amount of his debt; and those who did not choose to resort to this horrible extremity were authorised to subject the debtor to chains, stripes, and hard labour, or to sell him, his wife and children, to perpetual foreign slavery, *trans Tyberim*. This law, and the law giving fathers the power of inflicting capital punishments on their children, strikingly illustrate the ferocious and sanguinary character of the early Romans.

There is reason to think, from the silence of historians on the subject, that no unfortunate debtor ever actually felt the utmost severity of this barbarous regulation; but the history of the Republic is full of accounts of popular commotions, some of which led to very important changes, that were occasioned by the exercise of the power given to creditors of enslaving their debtors and subjecting them to corporal punishments. The law, however, continued in this state, till the year of Rome 427, 120 years after the promulgation of the twelve tables, when it was repealed. It was then enacted, that the persons of debtors should cease to be at

the disposal of their creditors, and that the latter should merely be authorized to seize upon the debtor's goods, and sell them by auction, in satisfaction of their claims. In the subsequent stages of Roman jurisprudence further changes were made, which seem generally to have leaned to the side of the debtor, and it was ultimately ruled, that an individual who had become insolvent, without having committed any fraud, should upon making a *cessio bonorum*, or a surrender of his entire property to his creditors, be entitled to an exemption from all personal penalties. *Terasson Hist. de la Jurisp., Romaine*, 117.

BANKRUPTCY, the state or condition of a bankrupt.

BANK STOCK, shares in the property of a bank.

BANNIMUS, the form of an expulsion of a member from the University of Oxford, by affixing the sentence in some public place, as a denunciation or promulgation of it.

BANNING, an exclamation against, or cursing of another.

BANNITION, expulsion.

BANNITUS, or **BANNIATUS**, an outlaw; a banished man.

BANNOCK, a thick cake of oatmeal, being a perquisite of a mill-servant in thirlage.

BANNUM, or **BANLEUGA**, the utmost bounds of a manor or town. *Seld. Hist. of Tithes*, 75.

BAPTISM [βαπτισμα, Gk.] See **BIRTHS**.

BAR, a place set apart in a Court of Law or Equity for the barristers to plead; also the place where criminals stand or sit during their trial.

BAR, PLEA IN, a pleading showing some ground for barring or defeating the action at Common Law. A plea in bar is, therefore, distinguished from all pleas of the dilatory class, as impugning the right of action altogether, instead of merely tending to divert the proceedings to another jurisdiction, or suspend them, or abate the particular writ or declaration. It is, in short, a substantial and conclusive answer to the action. It follows from this property, that, in general, it must either deny all, or some essential part of the averments of fact in the declaration; or, admitting them to be true, allege new facts which obviate or repel their legal effect. In the first case the defendant is said, in the language of pleading, to *traverse* the matter of the declaration; in the latter, to *confess and avoid* it. Pleas in bar are consequently divided into (1), pleas by way of traverse; and (2), pleas by confession and avoidance. *Step. Plead.* 57.

In equity, a plea in bar is a defence resorted to (when there is no defect apparent on the face of the plaintiff's bill), inducting affirmative matter, and reducing the case to a particular point, seeking to displace the plaintiff's equity.

Pleas in bar may be ranked under three heads:—

1, Pleas founded on some bar created by statute, subdivided into:—

- (a) The Statutes of Limitations.
- (b) The Statute for the Prevention of Frauds and Perjuries, 29 Car. II., c. 3.
- (c) Any other statute, public or private, which has created a bar, as the ship registry acts, for example.
- (d) The plea of a statute-fine and non-claim.

2. Pleas founded on matter of record, or as of record, in some court, divided into—

First, Matters of record, technically so called; subdivided into—

- (a) A common recovery.
- (b) The plea of a judgment at law in a Court of Record.

Second, Matters as of record, subdivided into—

- (a) The sentence or judgment of a foreign court.
- (b) A decree of a Court of Equity, signed and enrolled, for the same matter, and substantially between the same parties.

3. Pleas of matter purely *in pais*, as it is termed, that is, upon matter of fact, not of record. Pleas of this sort go sometimes both to the discovery sought and to the relief prayed by the bill, or to some part of it; sometimes only to the discovery, or part of the discovery, and sometimes only to the relief, or a part of the relief. The principal of them are:—

- (a) A release.
 - (b) A stated account.
 - (c) A settled account.
 - (d) An award.
 - (e) A purchase for a valuable consideration.
 - (f) Title in the defendant, generally founded on a will, conveyance, or long, peaceable, and adverse possession.
- Story's Equity Plead.*, ch. xiv.

BAR, TRIAL AT, the inquest or examination of a difficult cause before the four Judges in the Superior Court in which the action and pleadings took place, instead of at *Nisi Prius*. It is entirely discretionary with the Court to grant it at all, unless the Crown be actually and immediately interested, when the Attorney General may demand it as of right. It is moved for after issue joined, and fifteen days' notice of trial must be given. A special jury of the county in which the venue is laid is impanelled, unless the Court imposes the terms of trying by a Middlesex or Surrey jury, or the parties consent to the contrary. The record is made up for trial without any *nisi prius* clause, and the *distringas* directs the jury to appear in the Superior Court only. 1 *Chit. Arch. Prac.* 261.

BARBICAN, a watch-tower, or bulwark.

BARBICANAGE, money given towards the maintenance of a barbican; a tribute for repairing or building a bulwark.

BARCARIUM, a sheep cote; a sheep walk.

BARGAIN AND SALE, a conveyance, introduced before the Statute of Uses, and originating out of an equitable construction of

the Court of Chancery. A bargain was made, or a contract entered into, for the sale of an estate, the purchase money was paid, but there was either no conveyance at all of the legal interest, or a conveyance defective at law, by reason of the omission of livery of seisin or attornment: equity, properly thought, that the estate ought in conscience to belong to the person who paid the money, and therefore considered the bargainer, or the contractor, as a trustee for him. An equitable investment in land, thus raised and conveyed, in the first instance, by the payment of money upon a mere contract, or upon a conveyance inoperative at law, became, in process of time, transferable by a formal conveyance under the name of a bargain and sale. The bargainee, entitled to the use by virtue of this equitable conveyance, became immediately seized of the possession by the Statute of Uses, and the operation of that statute tended, in effect, to supersede the solemnities of livery of seisin and attornment: for whenever a pecuniary consideration was introduced into a conveyance, unaccompanied by livery of seisin or attornment, such conveyance immediately became a bargain and sale, and the possession was thereupon transferred to the bargainee without any other ceremony than the mere delivery of the deed. Therefore, to restore in some measure the policy of the common law, in adding notoriety to the transfer of property, the stat. 27 Hen. VIII., c. 16, directs that every conveyance of any estate of inheritance or freehold by bargain and sale shall be enrolled within six lunar months after the date thereof.

A pecuniary consideration is necessary to raise a use upon this conveyance, therefore, the consideration of a long acquaintance, or of friendship, or of natural love and affection, or of marriage, or that the bargainee is bound in a recognizance for the bargainer, cannot create a use upon a bargain and sale, but the efficacy of this conveyance appears never to have depended upon the amount of the valuable consideration, and it is now unnecessary to prove an actual payment, if the consideration be expressed in the deed. A bargain and sale does not operate by transmutation of seisin or possession, and therefore if it be made to A. and his heirs, to the use of B. and his heirs, to the use of or in trust for C. and his heirs, A. will take the use, and consequently will have the legal estate, B. takes nothing, and C. will have the equitable beneficial estate. *Sanders on Uses and Trusts*, vol. ii. p. 53; *Watkins' Principles of Conveyancing*, chap. xii.

BARGAINEE, a person to whom a bargain and sale is made.

BARGAINER, or **BARGAINOR**, a person who makes a bargain and sale.

BARKARY, a tan house, or place to keep bark in for the use of tanners.

BARMOTE, or **BARGHMOTE**, a court, not of record, within the Hundred of the Peak in Derbyshire, for the regulation of groves,

possessions, and trade of the miners, and lead.

BARON [*beorn*, Sax., noble], the lowest degree of nobility next to a viscount, and above that of a knight or baronet. The present barons are—1, By prescription; for that they and their ancestors have immemorially sat in the Upper House. 2, Barons by patent, having obtained a patent of this dignity to them and their heirs male, or otherwise. 3, Barons by tenure, holding the title as annexed to land; it is said that it is the possession of their ancient landed territories which imparts the barony to the bishops, thereby giving them a place in the Upper House, although they hold by succession, not by inheritance; but it is rather thought that they sit in the Upper House by immemorial usage. There are also Barons by office, as the

BARONS OF THE EXCHEQUER, the five judges to whom the administration of justice is committed in causes between the Queen and her subjects relating to matters concerning the revenue. They were formerly Barons of the realm, but now are persons learned in the laws, who preside in the common law court, called "The Exchequer of Pleas" at Westminster; their office is also to look into the Crown accounts, for which reason they have auditors under them.

BARONS OF THE CINQUE PORTS, members of the House of Commons, elected by those ports, two for each.

BARON COURT, a court, not of record, attached to a manor, being an inseparable incident thereto, for a copyholder has no other evidence of his title than the rolls of the court, which he can inspect and take copies of to use as he may think proper, and if the lord refuse, the Court of Queen's Bench will compel such inspection by *mandamus*, and if the lord then refuse, he will be attached. There are two courts incident to every manor, a court baron or freeholders' court, and a customary court, which only relates to the copyholders, who form the homage and transact the necessary business, the lord or his steward presiding as judge. Although these courts are essentially distinct, yet they are usually held at the same time, and the same roll serves to record the proceedings of both. In the court baron, the suitors are judges; in the customary court the suitors are assistants to the lord or his steward, who is the judge. *Watkins on Copyholds*.

BARON AND FEME, [Fr.], husband and wife. A wife being under the protection and influence of her *Baron*, lord, or husband, is styled a *feme-covert* (*fœmina viro cooperta*), and her state of marriage is called her *coverture*. By marriage, the husband and wife are one person in law, that is, the very being or legal existence of the woman is suspended during the marriage; or at least is incorporated and consolidated into that of her husband; under whose wing, protection, and cover she performs every thing; therefore, if an

estate he granted or conveyed to an husband and wife, and their heirs, they do not take by moieties, as other joint-tenants, but the entire estate is in both; and if an estate be granted to an husband and wife and another person, the husband and wife have but one moiety, and the other person the other moiety. *Stephen's Com.*, book iii. chap. ii.; *Roper on Husband and Wife*.

BARONET [*Baron* and *et*, diminutive termination], a dignity of inheritance created by letters patent, and descendible to the issue male, and has precedency before all knights, except Knights of the Garter; and they would even take precedency of them, were it not that Knights of the Garter are always privy counsellors. The order was instituted by James I. in 1611, and was then a purchased honour for 1000*l.*, the money being applied to pay the troops sent to quell an insurrection in the province of Ulster in Ireland. Their number was at first 200, but now much increased. They are allowed to charge their coat with the arms of Ulster, which are a sinister hand *gules* (red), in a field *argent* (white). The title "Sir" is prefixed to their name. The first baronet ever created was Sir Nicholas Bacon, of Redgrave, in Suffolk, whose successor is therefore styled *Primus Baronetorum Angliæ*. 1 *Bl. Com.* 403.

BARONY, or **BARONAGE**, the honour and territory which give title to a baron; also the body of barons and peers.

BARRATOR, or **BARRETOR** [*barrateur*, Fr., a deceiver], a common mover of suits and quarrels in disturbance of the peace, either in courts or elsewhere in the country, that is himself never quiet, but at variance with one or other, taking and detaining the possession of houses and lands or goods by false inventions, &c. He is the most dangerous oppressor in the law, for he oppresses the innocent by colour of law, which was made to protect them from oppression. The punishment is fine and imprisonment; and if the offender belong to the profession of the law, he is disabled from practising for the future. 12 *Geo. 1*, c. 29. No one can be a barrator in respect of one act only, it must be several.

BARRATRY, or **BARRETRY** [*barratrare*, Ital., to cheat], a quarrel or contention; the act of a barrator. It used to be applied to the obtaining benefits at Rome. In marine insurance, it is the commission of any fraud upon the owners or insurers of a ship by the captain or crew, as deserting her, sinking her, or doing any act which may subject her to arrest, detention, loss, or forfeiture, &c. It is the practice in most countries to insure against barratry. Most foreign jurists hold, that it comprehends every fault which the master and crew can commit, whether it arise from fraud, negligence, unskilfulness, or mere imprudence. But in this country it is ruled, that no act of the master or crew shall be deemed barratry, unless it proceed from a criminal or fraudulent motive. *Per*

on *Insurance*, c. 5; *Marshall on Insurance*, b. 1, c. 12, § 6.

In Scotland, it is the crime of a judge who is induced, by bribery, to pronounce a judgment.

BARREN MONEY is used in the civil law for that which is not put out to interest.

BARRISTER, or **BARRASTOR**, a counselor or advocate learned in the law, admitted to plead at the bar, and there to take upon himself the protection and defence of clients. They are termed *jurisconsulti* and *licentiati in jure*.

A counsel can maintain no action for his fees, which are given not as a salary or hire, but as a mere gratuity, which a barrister cannot demand without doing wrong to his reputation, unless under a special contract for them. *Veitch v. Russell*, 3 Q. B. 928. Beside, a fee does not depend upon the event of a cause; and for the purpose of promoting the honour and integrity of the bar, it is expected that all their fees should be paid when their briefs are delivered. On the other hand, he is not liable to an action for negligence or unskilfulness.

In order to encourage due freedom of speech in the lawful defence of clients, and at the same time to give a check to unseemly licentiousness, a counsel is not answerable for any matter by him spoken relative to the cause in hand and suggested in his client's instructions, although it should reflect upon the reputation of another, and even prove absolutely groundless; but, if he speak an untruth of his own invention, or even upon instructions, if it be impertinent to the cause in hand, he is then liable to an action from the party injured. It is a great principle, that no action can be maintained for slander, originating in judicial proceedings, as being used by counsel, if they be pertinent to the subject-matter of discussion.

They are either utter or *outer* barristers, that is, plead without the bar; Queen's counsel and serjeants at law who plead within the bar.

The number of barristers, &c., in town and country, in 1843, was 2484; the number of practitioners under the bar, viz., special pleaders and conveyancers, in 1843, was 135.

BARROW [*boerg*, Sax., a heap of earth], a large hillock or mount, raised or cut up in many parts of England, said to be Roman *tumuli*, or sepulchres. *Encyc. Lond.*

BARTER [*baratar*, Span., to overreach or circumvent], to exchange one commodity for another, or truck wares for wares.

BARTON, **BERTON**, or **BURTON**, demesne lands of a manor, a great farm, a manor house, outhouses, fold yards.

In the 2 & 3 Edw. VI., c. 82, barton lands and demesne lands are used as synonymes. *Blount* says it always signified a farm distinct from a mansion; and *bertonarii* were farmers or husbandmen who held bartons at the will of the lord. In the west of England they call a great farm a *barton*, and a small farm a *living*. *Encyc. Lond.*

BAS-CHEVALIERS, low or inferior knights, holding military fees by a base tenure, as distinguished from bannerets, chief or superior knights. Simple knights are called knights bachelors, *bas-chevaliers*.

BASE-COURT, an inferior court, not of record, as a court baron, court leet, &c.

BASE-ESTATE, lands held by base tenants, who performed villeinous services to their lords; but there is a difference between a base estate, and villenage, for to hold in pure villenage is to do all that the lord commands; and, if a copyholder have but a base estate, he, not holding by the performance of every commandment of his lord, cannot be said to hold in villenage. *Kitch.* 41.

BASE-FEE, a freehold estate of inheritance, which has a qualification subjoined to it, and which must be determined whenever the qualification annexed to it is at an end. Thus if a tenant in tail, not having the immediate remainder or reversion in fee, were to convey the fee without the consent of the protector of the settlement, a base fee would be created, which would endure so long as there was issue of such tenant in tail capable of inheriting, but which must be determined when such issue fails, this being the qualification annexed. *Watkins' Conv.* 134.

BASSA TENURA, a base tenure, was a holding by villenage or other customary service, opposed to *alta tenura*, the highest tenure in *capite*, or by military service.

BASE-INFEFTMENT, a disposition of lands by a vassal, to be held of himself. *Scotch Law.*

BASE-RIGHTS, those by which a grantor creates a subinfeudation in favour of a vassal, to be held of himself. *Ibid.*

BASELS, coins abolished by *Hen. II.*, 1158.

BASELARD, or **BASILLARD**, a weapon, a poignard. *Speight's Chaucer*, 12 Ric. II., c. 6.

BASILEUS [Gk.], a king.

BASKET TENURE, lands held by the service of making the king's baskets.

BASNETUM, a helmet.

BASSINET, a skin used by soldiers for coverings.

BASTARD [*bastard*, Gk., a concubine; or *bastard*, Brit., *nothus*, *spurius*; or *bastard*, from *bas*, low, and *start* (*steort*, Sax.), risen, upstart], a child not born in lawful wedlock (i. e., whose parents are not married to one another), or not born within a competent time after the determination of wedlock, by divorce or death. And a child born during wedlock may be a bastard, as for instance where, from his absence, the husband could not have had access to his wife, and presumption of legitimacy may be rebutted by *physical* evidence proving, or by *moral* evidence rendering probable, the contrary. And if a man or woman marry a second wife or husband, the first being living, and have issue by such second wife or husband, the issue is a bastard.

The civil and canon laws do not allow a child to remain a bastard, if the parents afterwards intermarry, and this is the law in

Scotland; but the English law materially differs from them, for although the child needs not be *begotten*, yet it is an indispensable condition of legitimacy that it be *born* after lawful wedlock.

By the common consent of mankind, the ordinary term of gestation is considered to be ten lunar months, or forty weeks. This period has been adopted, because general observation, in cases which allowed of accurate calculation, has proved its correctness. It is not, however, denied, that differences of one or two weeks have occurred. Dr. Wm. Hunter, in answer to a question put to him on this subject, replied, "that the usual period is nine calendar months (thirty-nine weeks), but there is very commonly a difference of one, two, or three weeks." And it is impossible, indeed, in the nature of things, that this difference should not occur, since females usually calculate from the time when the catamenia disappear, and pregnancy may occur at any period between the interval.

The rights of a bastard are very few, being only such as he can acquire, for he cannot inherit any property, being held as the son of nobody (*nullius filius*), and sometimes the son of the people (*filius populi*); the maxim being, *qui ex damnato coitu nascuntur, inter liberos non computantur*.—(Those who are born from an unlawful connection, are not counted as children.) A bastard may gain a surname by reputation, though he has none by inheritance.

BASTARDY, an unlawful state of birth, which disables the person from succeeding to an inheritance.

BASTARD EIGNE, an elder son born before marriage; thus, if a man have a bastard son, and afterwards marry the mother and by her have a legitimate son, he is called *mulier putative*, and the eldest son *bastard eigne*. *Stephen's Com.*, vol. 1, p. 404.

BASTARD, one born in concubinage, a bastard.

BASTON, a staff or club.

BAS-VILLE, suburbs of a town.

BATABLE GROUND, land that is in controversy or about the possession of which there is a dispute, as the lands which were situated between England and Scotland before the Union.

BATH, KNIGHTS OF THE, a military order of knighthood, instituted by Richard II., who limited their number to 4. Hen. IV. increased them to 36. The order received its denomination from a custom of bathing before the knights received the golden spur. The badge or symbol is a sceptre, rose, thistle, and three imperial crowns, conjoined within a circle, upon which is the motto—"*Tria juncta in uno*," alluding to the three cardinal virtues—faith, hope, and charity. George I. revived the order by the solemn creation of a great number of knights.

BATTEL, a trial of combat, formerly allowed by the law, in military, criminal, or civil cases, where the defendant might fight with

the plaintiff, the result proving whether he was culpable or innocent. 3 *Bl. Com.* 337. Abolished by 59 *Geo. III.*, c. 46.

BATTERSEA, the ancient name of Battersea, in Surrey.

BATTERY. See tit. ASSAULT AND BATTERY.

BATTLINGS [*Batellus*, a small measure, from *Batus*, measure of allowance], an allowance of money, as "*battles*," or "*battels*," is an allowance of provisions, and "*to battle*," to take that allowance. *Ency. Lond.*

BAWDY-HOUSE [*lupanar fornix*], a house of ill-fame, kept for the resort and commerce of lewd people of both sexes. It is a common nuisance, and the 25 *Geo. II.*, c. 36, made perpetual by 28 *Geo. II.*, c. 19, enacts, that if two inhabitants paying scot and lot, shall give notice to a constable of any person keeping a bawdy-house, the constable shall go with them before a justice of the peace, and shall (upon such inhabitants making oath that they believe the contents of such notice to be true, and entering into a recognizance of 20*l.* each, to give material evidence of the offence), enter into a recognizance of 30*l.* to prosecute with effect such person for such offence at the next sessions; the constable shall be paid his reasonable expenses by the overseers of the poor, to be ascertained by two justices; and if the offender be convicted, the overseers shall pay to the two inhabitants 10*l.* each. On the constable's entering into such recognizance as aforesaid, the justice shall bind over the person accused to the next sessions, and if he shall think proper, demand security for such person's good behaviour in the mean time. A constable neglecting his duty forfeits 20*l.* Any person appearing as master or mistress, or as having the care or management of any bawdy-house shall be deemed the keeper thereof, and liable to be punished as such. The 58 *Geo. III.*, c. 70, §§ 7, 8, provides as to the notice to the overseers of the poor, who are to be the prosecutors, and the payment of expenses to witnesses.

BAY, or *pen*, a pond-head made up of a great height to keep in water for the supply of a mill, &c., so that the wheel of the mill may be turned by the water rushing thence, through a passage or flood-gate. 27 *Eliz.*, c. 19. Also a harbour where ships ride at sea, near to a port.

BEACON [*beacn*, Sax., a sign, whence *beekon*, to nod], a light-house or sea-mark, formerly used to alarm the country, in case of the approach of an enemy, but now of great use in guiding and preserving ships at sea, by night as well as by day. The Trinity House is empowered to set up any beacons or sea-marks wherever they shall be deemed necessary. 8 *Eliz.*, c. 13.

BEACONAGE, money paid towards the maintenance of beacons.

BEAD [*bede*, Sax., bead], a prayer; to say over beads is to say over one's prayers. They were most commonly in use before printing, when poor people could not afford to buy a manu-

script book, though they are still used in Roman Catholic countries. They are not permitted to be brought into England or any other superstitious things. 13 *Eliz.*, c. 2.

BEAM [*beam*, Sax., tree], the part of a stag's head, whence the horns spring, like branches out of a tree. A common balance of weights in cities and towns.

BEAMS, and **BALANCE**, instruments for weighing goods and merchandize, mostly used in the city of London.

BEARERS, persons who oppress others, usually called maintainers; justices have power to enquire into their actions, &c. 4 *Edw.* III., c. 11.

BEARROCSIRA, the ancient name of Berkshire.

BEASTS of chase [*feræ campestres*]. There are five, viz., the buck, doe, fox, marten, and roe.

BEASTS of the forest are the hart, hind, boar, and wolf. They are also called beasts of venary.

BEASTS and fowls of the warren are the hare, coney, pheasant, and partridge.

BEAU-PLEADER (to plead fairly), an obsolete writ upon the Statute of Marlbridge (52 *Hen.* III., c. 11), which enacts that neither in the circuits of the justices nor in counties, hundreds, or courts baron, any fines shall be taken for fair-pleading, i. e., for not pleading fairly or aptly to the purpose; upon this Statute, then, this writ was ordained, addressed to the sheriff, bailiff, or him who shall demand such fine, prohibiting him not to demand it; an *alias*, *pluries*, and *attachment* follow. *Nat. Br.* 596. It used to be had as well in respect of *vicious* as *fair* pleading, by way of amendment. 2 *Inst.* 122.

BEBBA, the ancient name of Bamburgh, in Northamptonshire.

BEDEL, or **BEADLE** [*Bydel*, Sax.], a crier or messenger of a court, who cites men to appear and answer an inferior officer of a parish or liberty. Many other kinds of subordinate officers are so called.

BEDELARY, the jurisdiction of a bedel.

BEDEREPE, or **BIDEREPE**, a service which certain tenants were anciently bound to perform, as to reap their landlord's corn at harvest.

BEDEWERI, Banditti, profligate and excommunicated persons.

BEER, a liquor compounded of malt and hops. The selling of it at beer-shops, &c., is regulated by 11 *Geo.* IV. & 1 *Wm.* IV., c. 64.

BEGGARS, persons who solicit alms. They are regulated by 11 *Geo.* IV. & 1 *Wm.* IV., c. 5.

BEHAVING AS HEIR, conduct by which an heir renders himself liable to the debts of his ancestors, as by taking possession of title-deeds, recovering rent, &c. *Scotch Law.*

BELGÆ, the ancient name of the inhabitants of Somersetshire, Wiltshire, and Hampshire. Also of the city of Wells, in Somersetshire.

BELISAMA, the ancient name of Rhibelmouth, in Somersetshire.

DE BELLA AQUA, the ancient name of Bellew and Bellaeu.

DE BELLA FIDE, the ancient name of Beaufoy.

BELLINUS SINUS, the ancient name of Billingsgate, in the city of London.

DE BELLO CAMPO, the ancient name of Beauchamp.

DE BELLO FAGO, the ancient name of Beaufo.

DE BELLO FOCO, the ancient name of Beaufeu.

DE BELLO LOCO, the ancient name of Beaulieu, in Hampshire.

DE BELLO MARISCO, the ancient name of Beaumarsh.

BELLOMARRISCUS, the ancient name of Beaumaris, the county town of Anglesey.

DE BELLO MONTE, the ancient name of Beaumont, a town in Nord, France.

DE BELLO PRATO, the ancient name of Beaupré.

DE BELLO SITU, the ancient name of Bel-lasise.

BELLO CLIVUM, **BELLO DESERTUM**, **BELLUS LOCUS**, the ancient names of Beaudesert, in Staffordshire.

BENCH, or **BANC**, a tribunal of justice.

BENCHER, a senior in the Inns of Court, entrusted with their government or direction. The benchers have the absolute and irresponsible power of punishing a barrister guilty of misconduct, by either admonishing or rebuking him, by prohibiting him from dining in the Hall, or even by expelling him from the bar, called disbarring. They might also refuse admission to a student, or reject his call to the bar.

DE BENEFACTIS, the ancient name of Benfield.

Benedicta est expositio quando res redimitur à destructione. 4 *Co.* 26.—(Blessed is the exposition by which anything is saved from destruction.)

BENEFICE, an ecclesiastical living and promotion, a rectory or vicarage; all church preferments except bishoprics.

BENEFICIARY, he that is in possession of a benefice.

BENEFICIO PRIMO ECCLESIASTICO HABENDO. An ancient writ, which was addressed by the King to the Lord Chancellor, to bestow the benefice that should first fall in the royal gift, above or under a specified value, upon a person named therein. *Reg. Orig.* 307.

Beneficium non datum nisi propter officium. *Hob.* 148.—(A remuneration not given, unless on account of a duty performed.)

Beneficium principis debet esse mansurum. *Jenk. Cent.* 168.—(The benefit of a prince ought to be lasting.)

BENEFIT OF CLERGY [*privilegium clericale*], an arrest of judgment in criminal cases. The origin of it was this: Princes and States, anciently converted to Christianity, granted to the clergy very bountiful privileges and exemptions, and particularly an immunity of their persons in criminal proceedings before secular judges. The clergy afterwards increasing in wealth, number, and

power, claimed this benefit as an indefeasible right, which had been merely matter of royal favour, founding their principal argument upon this text of Scripture: "touch not mine anointed, and do my prophets no harm." They obtained great enlargements of this privilege, extending it not only to persons in holy orders, but also to all who had any kind of subordinate ministration in the church, and even to laymen, and applying it to civil as well as criminal causes. In criminal proceedings the prisoner was first arraigned, and then he might have claimed his benefit of clergy, by way of declinatory plea, or, after conviction, by way of arresting judgment. He was then burnt with a hot iron in the brawn of his left thumb, in order to shew that he had been admitted to this privilege, which was not allowed twice to the same person; he was then handed over to the ecclesiastical court, and after the solemn farce of a mock trial, he was usually acquitted, and was made a new and an innocent man. These exemptions at length grew so burthensome and scandalous, that the legislature, from time to time, interfered, until the 7 & 8 Geo. IV., c. 28, s. 6, abolished benefit of clergy. 2 *Hale's Hist.* 323; 4 *Bl. Com.*, chap. 28.

BENEFIT SOCIETIES, or **FRIENDLY SOCIETIES**, associations, chiefly among the industrious and lower classes of society for the purpose of affording each other relief in time of sickness, and their widows and children assistance at their death. They are protected by 10 Geo. IV., c. 56.

BENEFIT OF DISCUSSION, is that, whereby the antecedent heir, such as the heir of line in a pursuit against the heir of tailzie, &c., must be first pursued to fulfil the defunct's deeds and pay his debts. This benefit is likewise competent in many cases to cautioners. *Scotch Law*.

BENERTH, an ancient service which a tenant rendered to his lord with plough and cart.

BENEVOLENCE, a voluntary gratuity given by subjects to their king. It is now yielded with consent of the House of Commons, in pursuance of the petition of right, 3 *Car.* 1, and 1 *W. & M.*, st. 2, § 2. Also an aid granted by a tenant to his lord, in times of difficulties and distress. Abolished by 12 *Car.* II., c. 24.

BENEVOLENTIA REGIS HABENDA, the form of purchasing the royal pardon and favour, in ancient fines and submissions, to be restored to estate, title, or place. *Paroch. Antiq.*, p. 172.

Benignè faciendæ sunt interpretationes, propter simplicitatem laicorum, ut res magis valeat, quam pereat; et verba intentioni, non è contra, debent inservire. Co. Litt. 36.—(Constructions are to be made liberally, on account of the simplicity of the laity, that the thing may rather avail than perish, and words ought to be made subservient to the intention, not contrary to it.)

This maxim relates to the mode of interpreting written instruments. The judges will rather apply the words of a document

to fulfil its lawful intent, than destroy such intent, because of insufficient language, for to the intention, when once discovered, all technical forms of expression must give way. Words of art, which, in the understanding of conveyancers, have a peculiar meaning, are not to be scanned and construed too strictly. if, by so doing, one part of an instrument be made inconsistent with another, rendering the whole incongruous and unintelligible; the Courts will, therefore, treat such words as used in their popular sense, and interpret the language of the parties *secundum subjectam materiem*, referring particular expressions to the subject-matter of the agreement, in order to give to the whole full and complete force.

Benignior sententia in verbis generalibus seu dubiis, est præferenda. 4 Co. 15.—(The most favourable construction is to be placed on general or doubtful expressions.)

BEQUEATH [*cwithe*, Sax. will], to leave personally by will to another.

BEQUEATHMENT, a legacy.

BEQUEST, some sort of personal property left by will; a legacy.

BERBIAGE, a rent paid for the depasturing of sheep. *Cowel*.

BERBICARIA, a sheep down, or ground to feed sheep.

BERCARIA, a sheep-fold, or other enclosure to keep sheep.

BERCEIA, **BERCHERIA**, the ancient names of Berkshire.

BERECHINGUM, the ancient name of Barking, in Essex.

BEREFELLARII, the seven churchmen, who formerly belonged to the church of St. John of Beverley.

BEREWICHA, or **BEREWICA**, a village or hamlet belonging to some town or manor. *Doomsday Book*.

BERGHMASTER [*Berg*. Sax., a hill], a bailiff or chief officer among the Derbyshire miners, who also executes the office of coroner; a mountaineer or miner.

BERGHMOTH, or **BERGHMOTE** [*Berg*. Sax., a hill, and *gemote*, an assembly], an assembly or court upon a hill, held in Derbyshire, for deciding pleas and controversies among the miners. *Squire on the Anglo-Saxon Government*.

BERIA, **BERIE**, or **BERRY**, a large open field. Those cities and towns in England which end with this word are built on plain and open places, and do not derive their names from boroughs as *Sir Henry Spelman* imagines. Most of our glossographers, in the names of places, have confounded the word *berie* with that of *bury* and *borough* as the appellatives of ancient towns; whereas the true sense of the word *berie* is a flat wide campaign, as is proved from sufficient authorities by the learned *Du Fresne*, who observes that *Beria Sancti Edmundi*, mentioned by *Mat. Paris*, sub. ann. 1174, is not to be taken for the town, but for the adjoining plain. To this may be added, that many flat and wide meads and other open grounds

are called by the name of *berries* and *berry-fields*; the spacious meadow between Oxford and Ilsey was, in the reign of King Athelstan, called *Bery*, as is now the largest pasture ground in Quarendon, in the county of Bucks, known by the name of *Beryfield*: and, though these meads have been interpreted *demesne*, or manor meadows, yet they were truly any flat or open meadows contiguous to a villa or farm. *Encyc. Lond.*

BERMUNDI INSULA, the ancient name of Bermondsey, in Surrey.

BERNET [*byran*, Sax.], to burn.

BERRA, a plain open heath.

BERSA, a limit or bound.

BERSARE [*bersen*, Ger.], to shoot or hunt.

BERRY, or **BURY** [*beorg*, Sax., a hill or castle], a vill or seat of habitation of a nobleman; a dwelling or mansion house; a sanctuary.

BESAILE, or **BESAYLE** [*Besayeul*, Fr.], a father of a grandfather, i. e. a great grandfather.

BESCHA [*bercher*, Fr., to dig], a spade or shovel.

BESTIALS, beasts or cattle of any sort.

BETACHES, laymen using glebe lands.

BEVERCHES, bed works, or customary services done at the bidding of the lord by his inferior tenants.

BETTER EQUITY. It thus arises:—if a prior incumbrancer did not take a security which effectually protected him against any subsequent dealing to his prejudice by the party who had the legal estate, a second incumbrancer taking a security, which in its nature afforded him that protection, had "the better equity." *Deark v. Hall and others*, 3 Russ. 1—65.

BEWARED, expended. Before the Britons and Saxons had introduced the general use of money, they traded chiefly by exchange of wares.

BIÆUM [*βλαυον*, Gk.], in rhetoric, a kind of counter argument, whereby something alleged for the adversary is retorted against him and made to conclude a different way: for instance, *Occidisti, quia adstitisti interfecto. Blaυον, Immo quia adstiti interfecto, non occidi; nam si id esset, in fugam me conjecissem*. "You killed the person, because you were found standing by the body. *Biæum*, Rather, I did not kill him, because I was found standing by his body; since, in the other case, I should have run away."

In the Grecian law, it was an action brought against those who ravished women, or used violence to man. *Encyc. Lond.*

BIATHANATOI [*βλα*, Gk., violence, and *θανατος*, death], suicides or persons taken away by violent deaths.

BIDALE, or **BIDALL** [*biddan*, Sax., to pray or supplicate], an invite of friends to drink ale at the house of some poor man, who hopes thereby to be relieved by charitable contribution. It is something like "*housewarming*," i. e., a visit of friends to a person beginning to set up housekeeping. 26 Hen. VIII., c. 6.

BIDDING OF THE BEADE, a charge or warning given by the parish priest to his parishioners at some special time, to come to prayers upon any festival or saint's day, according to the canons of the church; also asking the hauns is called bidding. *Rubric*.

BIDDINGS, raising the price of a thing at a sale or auction. The French call this *encherir*. It answers to what the Romans called *licitari*; they used to bid by holding up the hand or finger.

BIDENTES, two yearlings, tags, or sheep of the second year. *Paroch. Antiq.* 216.

BIDUANA, a fasting for the space of two days. *Matt. West.* 135.

BIENS, property; this term comprehends not merely goods and chattels, as in the common law, but also real estate, according to the sense attached to it by the civilians and continental jurists. *Story's Conf. Laws*, 13.

BIGA, a cart, wain, or waggon; a chariot drawn by two horses, harnessed side by side; or, properly, a cart with two wheels sometimes drawn by one horse.

BIGAMUS, a person guilty of the offence of bigamy.

Bigamus seu trigamus, &c., est qui diversis temporibus et successive duas seu tres uxores habuit. 4 Inst. 88.—(A bigamus or trigamus, &c., is one who at different times and successively has married two or three wives).

BIGAMY, the felonious offence of a husband or wife marrying again during the life of the first wife or husband. It is not strictly correct to call this offence *bigamy*; it is more justly denominated *polygamy*, i. e., having a plurality of wives or husbands at once; while bigamy, according to the canonists, consists in marrying two virgins successively, one after the death of the other, or in once marrying a widow.

The statute 1 *James I.*, c. 11, somewhat altered by 9 *Geo. IV.*, c. 31, § 22, excepts four cases in which such second marriage would not be felonious:—1. Where either party has been continually abroad for seven years, provided the party in England has no notice of the other being living within that period. 2. Where either of the parties has been absent from the other for seven years within this kingdom, and has had no knowledge of the other being alive within that time. Although a second marriage, under these two exceptions, would not be deemed a felony, yet it would be null and void, and the parties may be censured and punished by the Ecclesiastical Courts. 3. Where the first marriage is declared absolutely void by proper sentence, and the parties loosed, *à vinculo matrimonii*. 4. Where either of the parties being under the age of consent, at the solemnization of a first marriage, afterwards declares it to be void, which a second marriage amounts to, but if the parties agreed to the first marriage, after the age of consent, such agreement completing the contract, would make it a real marriage, if, then, either of them marry again, it

would be a bigamy. This offence of bigamy is punishable wherever committed, but the burthen of proving the first marriage lies upon the prosecutor. And the first wife cannot be admitted as a witness against her husband, because she is the true wife, but the second may, for she is indeed no wife at all, and so *et converso*, of a second husband. Consult 1 *Hawk. P. C.*, c. 32; 1 *East P. C.*, c. 12; 1 *Russ.*, c. 23; *Co. Litt.* 79 b, n. 1; 3 *Statk. Evid.*, "Poligamy;" 1 *Harrison's Dig.* 750; 4 *Bl. Com.* 164.

BILAGINES, bye laws of corporations, &c.

BILANCIIS DEFERENDIS, an obsolete writ addressed to a corporation for the carrying of weights to such a haven, there to weigh the wool anciently licensed for transportation. *Reg. Orig.* 270.

BILBOES, a punishment at sea answering to the stocks on land.

BILL, a document submitted to Parliament, in which are contained certain propositions for its consideration, which, being approved of, is passed, and becomes law in the shape of a Statute.

To bring a bill into either House of Parliament, if the relief sought by it be of a *private* nature, a petition, setting forth the grievance desired to be remedied, is presented by a member, the necessary documents having been first deposited, as provided for by 7 Wm. IV. and 1 Vict., c. 83. The petition is then referred to a committee of members, and in the House of Lords to two of the Judges, who examine the matter alleged in it, and make their report to the House, upon which leave is given to bring in the bill, or otherwise. If it relate to a *public* matter, the bill is brought in upon motion, without petition, but in pursuance of several standing orders, as shewn in *Lumley's Parliamentary Practice*. The bill, drawn out and printed, is then presented to the House; it is then read a first time, and at a convenient distance, a second time, after which it is committed, *i. e.*, referred to a committee, composed of a few members, or the whole House, the Speaker quitting the chair, and another member being appointed chairman; the bill is then debated clause by clause, amendments made, the blanks filled up, and sometimes it is entirely new modelled; after this, the chairman reports it to the House, which re-considers the whole bill, and the question is repeatedly put upon every clause and amendment. It is then ordered to be engrossed and read a third time; if a new clause be afterwards added, it is done by tacking a separate piece of parchment on the bill, called a rider. The bill may be opposed at any of these stages, and if successfully, it must be dropped for that session, but if it pass the third reading, the title of it is settled, and it is carried by several members to the bar of the House of Peers, and delivered to the Speaker, for their concurrence; it there passes through the same forms, and if rejected, the matter passes *sub silentio*. If it be agreed upon, the

Lords send a message to the Commons, by two Masters in Chancery, or upon matters of high importance, by two of the Judges, that they have agreed to the same, and that it remains with the Lords; but if any amendments have been made, they are sent down with the bill to receive the concurrence of the Commons. If the Commons disagree to the amendments, a conference usually follows between members deputed from each House, who try to settle the difference, and if they cannot, the bill is dropped; if the Commons agree, a message is sent to the Lords to that effect. Precisely the same forms are observed, when a bill originates in the House of Lords. An *act of grace or pardon* is first signed by the Sovereign, and then read once only in each of the Houses, without any new engrossment or amendment. A *bill of supply*, after receiving the concurrence of the Lords, is sent back to the House of Commons, instead of being deposited in the House of Peers to await the Royal Assent, which is given in two ways, either by person or by commission, and then, and not before, it becomes a Statute or Act of Parliament; it is then printed at the Queen's press, for the information of the people. *Stephen's Com.*, vol. 2, p. 405.

BILL OF APPEAL, see **APPEAL**.

BILL OF ATTAINDER, see **ATTAINDER**.

BILL IN CHANCERY, or **BILL IN EQUITY**, a written statement of a plaintiff's case, which is in the nature of a petition to the Court, praying for some redress. It was probably borrowed from the civil law or from the canon law (which is a derivative from the civil law), or from both. The structure of a bill is composed of ten parts:—the *first* part is the *direction* or *address* of the bill to the Court from which it seeks redress, *i. e.*, to the Lord Chancellor, Lord Keeper, or Lords Commissioners, having, for the time being, the custody of the Great Seal, by their proper designation. The *second* part is the *introduction*, which contains the names and descriptions of the persons exhibiting the bill, commonly called in the bill by the title of "your orators and oratrices," according to their sex, together with the character in which they sue. The *third* part is the *premises*, or as it is more usually styled, the *stating part*, containing a narrative of the facts and circumstances of the plaintiff's case, and of the wrong or grievance of which he complains, and the names of the persons, by whom done and against whom he seeks redress, constituting in fact the real substance of the bill. The *fourth* part is the *confederation*, containing a general allegation or general charge of a confederacy between the defendant and other persons to injure or defraud the plaintiff. This part is not invariably inserted, it is treated as mere surplusage, and is never inserted in the case of a peer, or in an amicable suit. The *fifth* part is what is generally called the *charging part*, consist-

ing of some allegations, which set forth the matters of defence or excuse, which it is supposed the defendant intends or pretends to set up, to justify his non-compliance with the plaintiff's right or claim, and then charges other matters, which disprove or avoid the supposed defence or excuse. As the subject of the charging part of a bill is often to obtain a discovery of the defendant's case, it not unfrequently contains fictitious statements, and this is sometimes made a matter of serious complaint, as disreputable to public justice, and oppressive upon the defendant; it is, therefore, often omitted, and does not seem indispensable in any case, for the stating part ought fully to unfold and expound the plaintiff's case, and the charging part in general contains little more than an enlargement of that statement. The *sixth* part is the *jurisdiction clause*, and is intended to give jurisdiction of the suit to the Court by a general averment, that the acts complained of are contrary to equity, and tend to the injury of the plaintiff, and that he has no remedy, or not a complete remedy, without the assistance of a Court of Equity; but this clause is a mere superfluity. The *seventh* part is the *interrogating part*, questioning the defendant as to the truth of the several statements and charges. By the 17th of the Orders, 26th Aug. 1841, they must be numbered consecutively, and orderly set forth. The *eighth* part is the *prayer for relief*, which varies according to the circumstances of the particular case and the nature of the relief sought, it is followed by a prayer of general relief at the discretion of the Court. This should never be omitted, because if the plaintiff should mistake the relief, to which he is entitled, in his special prayer, the Court may yet afford him the relief, to which he has a right under the prayer of general relief, provided it is such relief as is agreeable to the case made by the bill. The *ninth* part is the *prayer of process* to compel the defendant to appear and answer the bill, and abide the determination of the Court on the subject. The *tenth* part is the *interrogating note*, provided by the 18th of the Orders, 26th Aug. 1841, specifying the interrogatories which each defendant is required to answer. Every bill must have the signature of counsel annexed to it, in order to secure regularity, relevancy, and decency in the allegations, and the responsibility and guarantee of counsel, that upon the instructions given to him, and the case laid before him, there is good ground for the suit, in the manner in which it is framed.

The general division of bills in equity is as follows:—

I. Original bills.

II. Bills not original.

III. Bills in the nature of original bills.

I. Original bills are those relating to some matter not before litigated in the court by the same persons, standing in the same interests. They are sub-divided into (a) those praying relief, and (b) those not praying relief.

(a) Those praying relief seek in that very suit a decision upon the whole merits of the case set forth by the plaintiff and a decree, which shall ascertain and protect present rights or redress present wrongs. The several kinds of them are:—

(1) Bills praying the decree or order of the Court touching some right claimed by the party exhibiting the bill, in opposition to some right, real or supposed, claimed by the party against whom the bill is exhibited, or touching some wrong done in violation of the plaintiff's right. This is the most common kind of bill, and is similar to a declaration at Common Law.

(2) Bills of interpleader, where the plaintiff claims no right in opposition to the rights claimed by the defendants, but prays a decree touching the rights of the defendants, for the plaintiff's safety.

(3) Bills of certiorari, which pray a writ of certiorari, in order to remove a cause from an inferior Court of Equity, for the purpose of having it further proceeded in, and decided in the superior Court of Equity, to which the writ is returnable.

(b) Those not praying relief, which merely ask the aid of the Court against possible future injury, or to support or defend a suit or action in another court of ordinary jurisdiction. They are—

(1) Bills to perpetuate the testimony of witnesses, or to examine witnesses *de bene esse*, i. e., conditionally.

(2) Bills of discovery, technically so called, i. e., for the discovery of facts resting within the knowledge of a party, to an action or proceeding in another court, or of deeds, writings, or other things in his custody or power.

II. Bills not original (or secondary bills), are those which relate to some matter already litigated in the court by the same persons, and which are either an addition to, or a continuance of, an original bill, or both. The kinds are:—

(1) A supplemental bill, which is merely an addition to an original bill to supply some defect in its frame or structure.

(2) A bill of revivor, which is a continuance of an original bill, to bring some new party before the Court, when by death, marriage, change of interest, or otherwise, the original party has become incapable of prosecuting or defending a suit, and that suit is, (as it is in equity technically called) abated, i. e., suspended in its progress.

(3) A bill of revivor and supplement, which continues a suit upon an abatement, and supplies defects which have arisen from some event subsequent to the institution of a suit.

III. Bills in the nature of original bills,

which are of a mixed character, sometimes partaking of the character of both of the previous divisions. Their kinds are:—

- (1) A cross bill exhibited by a defendant in an original suit against a plaintiff in such suit, touching some matter in litigation in the first suit.
- (2) A bill of review, which is brought to examine and reverse a decree made upon a former bill, which has been duly enrolled, and thereby become a record of the Court.
- (3) A bill to impeach a decree upon the ground of fraud.
- (4) A bill to suspend the operation of a decree, under special circumstances, as to avoid it on the ground of matter which has subsequently arisen.
- (5) A bill to carry a decree made in a former suit into execution.
- (6) A bill, partaking of the qualities of some one or more of the above bills, such as a bill in the nature of a bill of revivor, or in the nature of a supplemental bill, or in the nature of a bill of review, and others of a like character. Consult *Mitford*, *Story*, or *Welsford* on "*Equity Pleading*."

For the definitions of the several specific bills, see the words giving them their distinctive names, as Bill of Peace. See *PEACE*, &c.

BILL OF COSTS, an account of the charges and disbursements of an attorney or solicitor, incurred in the conduct of his client's business. It must be delivered, signed, to the client one *calendar* month before an action can be brought to recover the amount thereof, in order to give the client an opportunity of taxing it, and conveyancing items are now taxable; and an executor or administrator of an attorney or solicitor must also deliver a bill of costs, signed, before he can sue upon it. See 6 & 7 *Vict.*, c. 93.

BILL OF CREDIT, a license or authority given in writing from one person to another, very common among merchants, bankers, and those who travel, empowering a person to receive or take up money of their correspondents, mostly in foreign countries, but sometimes in land.

BILL in criminal cases, an indictment for a crime or misdemeanour preferred to a grand jury; evidence in support of it is adduced; if the grand jury think it a groundless accusation, they endorse "not a true bill," or "not found," and then the party is discharged without further answer, but a fresh bill may afterwards be preferred to a subsequent grand jury. If they are satisfied of the truth of the accusation, they then endorse upon it "a true bill;" the indictment is then said to be found, and the party stands his trial. 4 *Bl. Com.* 305.

BILL OF ENTRY, an account of the goods entered at the custom-house, both inwards and outwards. In this bill must be expressed the merchant exporting or importing, the quantity and species of merchandize, and whither transported, and whence.

BILL OF EXCEPTIONS, an appeal. If a judge, at the trial of a cause at *Nisi Prius*, mistake the law, either in directing a judgment of nonsuit, or in refusing demurrers to evidence, rejecting or admitting challenges to jurors, and other matters, the counsel for the party dissatisfied with the ruling of the judge, may tender a bill of exceptions at any time before verdict, and require the judge to seal it. The case always goes to the jury, and as soon as the bill of exceptions is completed, and judgment has been given upon the verdict, the mode of proceeding is by bringing a writ of error on the judgment, and having the matter determined in a Court of Error, and not in the court out of which the record issued for the trial. The practice, however, of granting new trials has limited the number of cases in which counsel deem it expedient to tender a bill of exceptions. *Bagley's Prac.* p. 426; *Chit. Arch. Prac.* p. 311.

BILL OF EXCHANGE, a negotiable security in the form of an open letter of request, or an order from one person to another, desiring him to pay, on his account, a sum of money therein mentioned, to a third person. It is consequently an assignment to a third person of a debt due to the person drawing the bill, from the person upon whom it is drawn. It is a chose in action, but, for the encouragement of commerce, it is assignable, at common law, by mere endorsement, so that very many names are frequently attached to one bill, and each of them is liable to be sued upon the bill, if it be not paid in due time. The person who makes or draws the bill is called the *drawer*, he to whom it is addressed is, before acceptance, the *drawee*, and after accepting it, the *acceptor*; the person in whose favour it is drawn is the *payee*, or *holder*; if he endorse the bill to another, he is called the *indorser*, and the person to whom it is thus assigned or negotiated, is the *indorsee* or *holder*, and so on *ad infinitum*. Consult *Chitty*, *Story*, or *Byles on Bills*.

BILL OF HEALTH, a certificate or instrument, signed by consuls or other proper authorities, delivered to the masters of ships at the time of their clearing out from all ports or places suspected of being particularly subject to infectious disorders, certifying the state of health at the time that such ship sailed. A *clean* bill imports that at the time the ship sailed no infectious disorder was known to exist. A *suspected* bill, commonly called a *touched* patent or bill, imports that there were rumours of an infectious disorder, but it had not actually appeared. A *foul* bill, or the absence of a clean bill, imports that the place was infected when the vessel sailed. *McCulloch's Comm. Dict.*

BILL OF INDEMNITY, an Act of Parliament, passed every session, for the relief of those who have unwittingly or unavoidably neglected to take the necessary oaths, &c., required for the purpose of qualifying them to hold their respective offices.

BILL OF LADING, a memorandum, signed by masters of ships, in their capacity of

carriers, acknowledging the receipt of merchants' goods; of which there are usually three parts, one kept by the consignor, one sent to the consignee, and one preserved by the master. It is the evidence of and title to the goods shipped.

BILL OF MIDDLESEX, a fictitious mode of giving the Court of Queen's Bench jurisdiction in personal actions, by arresting a defendant for a supposed trespass when he was considered to be in the custody of the marshal, and then waiving the trespass, and proceeding against such defendant for any other cause of action, upon the ground that when a person was once brought into court, and either in the actual or supposed custody of the marshal, he could not be charged even for any civil matter elsewhere. The 2 Wm. IV., c. 39, abolished this fiction; and now, by 1 & 2 Vict., c. 110, all personal actions in the Superior Courts of Law at Westminster must be commenced by writ of summons. *Bagley's Prac.* p. 71; *Chit. Arch. Prac.* 102.

BILL OF PARCELS, an account given by the seller to the buyer, containing particulars of all the sorts and prices of the goods bought.

BILL OF RIGHTS, a declaration delivered by the Lords and Commons to the Prince and Princess of Orange, 13th February, 1689, and afterwards enacted in Parliament, when they became King and Queen. It sets forth that King James did, by the assistance of divers evil counsellors, endeavour to subvert the laws and liberties of this kingdom, by exercising a power of dispensing with and suspending of laws; by levying money for the use of the Crown by pretence of prerogative, without consent of Parliament; by prosecuting those who petitioned the king and discouraging petitions; by raising and keeping a standing army in time of peace; by violating the freedom of election of members to serve in Parliament; by violent prosecutions in the Court of King's Bench, and causing partial and corrupt jurors to be returned on trials; excessive bail to be taken; excessive fines to be imposed, and cruel punishments to be inflicted: all which were declared to be illegal. And the declaration concludes in these remarkable words, "And they do claim, demand, and insist upon all and singular the premises, as their undoubted rights and liberties." And the act of Parliament itself (1 Will. & Mary, st. 2, c. 2), recognizes all and singular the rights and liberties asserted and claimed in the said declaration to be the true, ancient, indubitable rights of the people of this kingdom.

BILL OF SALE, an assignment of chattels personal under seal. Although the property in a personal chattel will pass without delivery of possession, and that not only in the case of an assignment, but even in the case of gift when made by deed, yet, by 13 Eliz., c. 5, every grant or gift of chattels (as well as lands), with an intent to defraud creditors or others, shall be void as against the persons to whom such fraud would be prejudicial

(though as against the grantor himself they shall stand good and effectual), and all such persons, partakers in or privy to such fraudulent grants, shall forfeit the whole value of the goods, one moiety to the Queen, and another moiety to the party grieved, and also on conviction shall suffer imprisonment for half a year. One of the principal badges of fraud, under this Statute, has always been deemed to be the retaining of the possession, by the original owner, contrary to the purport of his donation or assignment, because the possession is the only *indiciu*m of the property of a chattel, which is a thing unfixed and transitory. Where possession, therefore, is so retained, it is *prima facie* a case of fraud, entitling the creditors of the original owner to impeach the transaction, but supposing it to be consistent with the apparent object of the parties that possession should for the present be retained, as where the gift or grant is future or contingent only, the transaction is in that case clear from any fraudulent complexion. There are other marks and characters of fraud relating to bills of sale, as a general assignment of all chattels, without any exception: for it is hardly to be presumed that a man will strip himself entirely of all his personal property, not excepting his bedding and wearing apparel, unless there were some secret correspondence and good understanding between him and the vendee for a private occupancy of all or some part of the goods for his support. A secret manner of making a bill of sale and unusual claims in it, are badges of fraud, as that it is made honestly, truly, and *bona fide*, for such an artful and forced dress and appearance give a suspicion and jealousy of some defect varnished over with it. *Step. Com.*, vol. 2, p. 104. The earliest bill of sale we read of in history was that given to Abraham by the sons of Heth, Gen. xxiii. 20.

BILL OF SIGHT, when a merchant is ignorant of the real quantities or qualities of any goods assigned to him, so that he is unable to make a perfect entry of them, he must acquaint the collector or comptroller of the circumstance; and they are authorised, upon the importer or his agent making oath that he cannot, for want of full information, make a perfect entry, to receive an entry by *bill of sight* for the packages, by the best description which can be given, and to grant warrant that the same may be landed and examined by the importer in presence of the officers; and within three days after any goods shall have been so landed, the importer shall make a perfect entry, and shall either pay down the duties or shall duly warehouse the same. 3 & 4 Wm. IV., c. 52, § 24.

In default of perfect entry within three days, such goods are to be taken to the Queen's warehouse; and if the importer shall not within one month make perfect entry and pay the duties thereon, or on such parts as can be entered for home use, together with charges of moving and warehouse rent, such goods shall be sold for payment of the duties.

The East India Company are authorised, without the proof before mentioned, to enter goods by bill of sight, and to make perfect entry and pay the duties within three months.

McCulloch's Comm. Dict.

BILL OF STORE, a kind of license granted at the Custom-House to merchants, to carry such stores and provisions as are necessary for a voyage custom free. 3 & 4 Wm. IV., c. 52.

BILL OF SUFFERANCE, a license granted to a merchant, to suffer him to trade from one English port to another, without paying custom.

BILL IN TRADE, both wholesale and retail, and among workmen an account of merchandise or goods delivered, or of work done, and performed, &c.

BILLETS OF GOLD, wedges or ingots of gold. 27 Edw. III., c. 27.

BILLS OF MORTALITY, accounts of the births and deaths within a certain district.

It was with the view of communicating to the inhabitants of London, to the Court, and the constituted authorities of the city, accurate information respecting the increase or decrease in the number of deaths, and the casualties of mortality occurring amongst them, that the Bills of Mortality were commenced. London was then seldom entirely free from the plague, and the publication of the bills was calculated to calm exaggerated rumours, and to warn those who could do so conveniently to leave London, whenever the pestilence became more fatal than usual. The bills were commenced in 1592, during a time when the plague was busy with its ravages; but they were not continued uninterruptedly until the occurrence of another plague in 1603, from which period up to the present time, they have been continued from week to week; excepting during the Great Fire, when the deaths of two or three weeks were given in one bill.

In 1605, the parishes comprised within the Bills of Mortality included the ninety-seven parishes within the walls, sixteen parishes without the walls, and six contiguous out-parishes in Middlesex and Surrey.

In 1626, the city of Westminster was included in the bills; in 1636, the parishes of Islington, Lambeth, Stepney, Newington, Hackney, and Redriff. Other additions were made from time to time. At present the weekly Bills of Mortality include the ninety-seven parishes within the walls, seventeen parishes without the walls, twenty-four out-parishes in Middlesex and Surrey, including the district churches and ten parishes in the city and liberties of Westminster. The parishes of Marylebone and St. Pancras, with some others, which at the beginning of last century had only a population of 9150 persons, but now contain 360,113, were never included in the bills.

It is evident that the apprehension or existence of the plague conferred upon the Bills of Mortality their chief value and interest. The Lord Mayor every week trans-

mitted a copy to the Court. The reports are still professed to be made weekly "to the Queen's Most Excellent Majesty, and the Right Honourable the Lord Mayor."

The Bills of Mortality are now utterly valueless. In 1832, they reported 28,606 deaths, and in 1842 only 13,142; while the population had been constantly increasing at a rapid rate. In 1833, out of 26,577 deaths, the causes of decease were returned as unknown in 887 cases, or 1 in 30; and in 1842, out of 13,142 deaths, 4638 are returned in which the cause of decease was unknown, or less than 1 in 3. The Company of Parish Clerks might at least have expected to have been supplied with the returns of mortality from the clerks of the metropolitan churches, but this is not the case.

The parish of St. George's, Hanover Square, ceased to make returns in 1823; and in 1832 the parishes of All Saints, Poplar, and St. John's, Wapping, followed its example; and in 1834 the clerks of St. Bartholomew the Less, and St. George's, Queen Square, became defaulters. The fact is, that instead of 13,142 deaths being reported annually, there should be about 33,000. Besides the contumacious parishes which refuse to contribute to the formation of correct Bills of Mortality for the metropolis, there are no means by which the Parish Clerks' Company can procure returns of the burials in cemeteries, and in the places of interment belonging to dissenters; and the defects from this cause, in Maitland's time, now above a century since, exceeded 3000 a year.

At the foot of the Bill of Mortality of 1837, there was a notice to the following effect:—"By the operations of the New Registration Act, much difficulty has occurred in obtaining the reports of christenings and burials, in consequence of which, in some parishes, the reports have been wholly withheld; and in those of several other parishes, where the office of searcher has been discontinued, the disease of which deaths have taken place, has been necessarily omitted." They were added to the "unknown causes." In the Bill for 1842, as already noticed, the difficulty here spoken of has increased. The only "true bill," therefore, is that prepared at the Registrar General's Office. The first of these weekly bills was commenced Jan. 11, 1840, and the series has been continued from that time without interruption. *Knight's London*, cxi.

BINOMIUM VINOCIUM, BRINOMIUM VINOVA, BINOVIA, ancient names of Binchester, in the bishoprick of Durham.

BIRD, all creatures with wings and feathers, whether small or large, wild or tame; persons stealing those, which are ordinarily kept in a state of confinement, are punishable before justices. 7 & 8 Geo. IV., c. 29, §§ 31, 32.

BIRRETUM, a thin cap fitted close to the shape of the head; the cap or coil of a judge or serjeant-at-law.

BIRTH, the act of coming into life. The

Roman law did not consider an infant legitimate which was born later than ten months after the death of the father, or the dissolution of the marriage. The *Prussian* code declares that an infant born 302 days after the husband's death, shall be deemed legitimate. The *French* civil code declares that a child born in wedlock, has the husband for its father. He may, however, disavow it, if he can prove that, from the 100th to the 180th day before its birth, he was prevented, either by absence or some physical impossibility, from cohabiting with his wife. An infant born before 180 days after marriage cannot be disavowed by him in the following cases:—1. When he had knowledge of his wife's pregnancy before marriage. 2. When he assisted at the act of birth, and signed a declaration of it. 3. When the infant is declared incapable of living. Lastly, the legitimacy of an infant born 300 days after the dissolution *may* be contested. The *Scotch* law is concise and decisive. "To fix bastardy on a child, the husband's absence must continue till within six lunar months of the birth; and a child born after the tenth month is accounted a bastard." The *English* law does not prescribe a precise time. Although it has been the practice in our courts to consider forty weeks merely as the more *usual* time, yet they exercise a discretion of allowing a longer time, when the opinions of the faculty, or the peculiar circumstances of the case, are in favour of a protracted gestation. *Beck's Med. Juris.* 377.

BIRTHS, BURIALS, AND MARRIAGES.

The three most important events that can happen to a person, as to which the only regular documentary proofs, established at this day, are contained in the parish registers, which are in the nature of records; examined extracts from them are received in courts of justice, and certificates, under the hand of the minister of the parish, are resorted to for private purposes.

By 6 & 7 Wm. IV., c. 86, amended by 1 Vict., c. 22, a General Register Office is provided for keeping a register of births, deaths, and marriages in England. The act repeals so much of the 52 Geo. III., c. 146, and 4 Geo. IV., c. 76, as relates to the registration of marriages (§ 1), but does not affect the registration of baptisms and burials as by law established (§ 49).

The form for general registration of births comprises the time of birth, name, and sex of the child; the name, surname, maiden surname, and profession of the parents; the signature, description, and residence of the informant (who must be the father or mother, or, in case of their inability, the occupier of the house, § 20); the date of registration and signature of the registrar, and also the child's baptismal name (if any be given after registration, within six months).

That for deaths comprises the time of death, name and surname, sex, age, pro-

fession, and cause of death of the deceased; the signature, description, and residence of the informant (who must be some person present at the death, or in attendance during the last illness, or else the occupier of the house, § 25), with the date of registration and the signature of the registrar.

And the universal form for registration of marriages comprises the date of the marriage; the name and surname, age, condition, profession, residence, father's name and surname, and father's profession, of each of the parties; together with the place and form of marriage, and the signatures of the person marrying the parties, and of two witnesses.

Searches may be made, and certified copies obtained, at the General Registrar Office, or at the office of the Superintendent Registrar of the district, or from the clergyman, or registrar, or any other person who shall, for the time being, have the keeping of the register books.

By 3 & 4 Vict., c. 92, provision is made for depositing with the Registrar General a number of non-parochial registers and records of births, baptisms, deaths, burials, and marriages, which had been collected by a commission appointed for that purpose, and for rendering such register and records available as evidence.

BISANTIUM, BESANTINE, or BEZANT, an ancient coin, first issued at Constantinople; it was of two sorts—gold, equivalent to a ducat, valued at 9s. 6d.; and silver, computed at 2s. They were both current in England.

BI-SCOT, a fine of 2s. for not repairing banks, ditches, and causeways.

BISHOP [*biscop*, Sax., *Episcopus*, Lat.], an overseer or superintendent. The chief of the clergy in his diocese or jurisdiction in England, Wales, or Ireland, and the archbishop's suffragan or assistant. A bishop is elected by the Queen's *congé d'eslire*, or license to elect the person named by the Queen, in a letter missive, addressed to the dean and chapter; and if they fail to make election in twelve days, the Queen, by letters patent, may nominate whom she pleases. A bishop is said to be installed, and there are four things necessary to his complete election:—1, election, which resembles the presentation of a clerk to an ecclesiastical benefice; 2, confirmation, resembling admission; 3, consecration, similar to institution; 4, installation, answering to induction. The bishops are the lords spiritual in Parliament. There are twenty-four bishopricks in England, besides the bishoprick of Sodor and Man, the bishop of which is not a lord of Parliament; and eighteen in Ireland. A bishop has three powers:—1, a power of ordination, gained on his consecration, by which he confers orders, &c., in any place throughout the world; 2, a power of jurisdiction throughout his see or his bishoprick; 3, a power of administration and government of the revenues thereof, gained on confirmation. He

has, also, a consistory court, to hear ecclesiastical causes, and visits and superintends the clergy of his diocese. He consecrates churches, and institutes priests, confirms, suspends, excommunicates, grants licenses for marriages, and probates of wills. He has his archdeacon, dean and chapter, chancellor, who holds his courts, and assists him in matters of ecclesiastical law, and vicar-general. He grants leases for three lives, or twenty-one years, reserving the accustomed yearly rent; and he is addressed as "My Lord," being "A Right Reverend Father in God by Divine permission."

BISHOPRICK, a diocese or see of a bishop, *Bis idem ei agi bona fides non patitur; et in satisfactionibus, non permittitur amplius fieri quam semel factum est.* 9 Co. 53.—(Good law does not suffer any person to be in want of the same thing twice, and in making compensation it is not allowed to give more than is given at once.)

BISHOP'S COURT, an ecclesiastical court, held in the cathedral of each diocese, the judge whereof is the bishop's chancellor who judges by the civil canon law; and if the diocese be large, he has his commissaries in remote parts, who hold *consistory courts*, for matters limited to them by their commission.

BISSEXTILE [*bis*, Lat., twice, and *sextilis*, the sixth], leap year, consisting of 366 days, and happening every fourth year, by the addition of a day in the month of February, which, that year, consists of twenty-nine days. And this is done to recover the six hours which the sun takes up nearly in his course, more than the 365 days commonly allowed for it in other years. The day thus added was by Julius Cæsar appointed to be the day before the 24th of February, which, among the Romans, was the sixth of the calends, and which, on this occasion, was reckoned twice; whence it was called the *bissextile*. By 21 Hen. III., to prevent misunderstanding, the intercalary day and that next before it are to be accounted as one day. The supernumerary day, in leap years, is added to the end of February and called the 29th of that month. *Encyc. Lond.*

BLACK ACT, the 9 Geo. II., c. 21, so called because it was occasioned by the outrages committed by persons with their faces blacked or otherwise disguised, who appeared in Epping Forest, near Waltham, in Essex, and destroyed the deer there, and committed various other enormities. Repealed by 7 & 8 Geo. VI., c. 27.

BLACK ACTS, acts printed in the old black letter, during the dynasty of the Stewarts in Scotland.

BLACK BOOK, a book lying in the Exchequer.

BLACK GAME, heath fowl, in contradistinction to red game, as grouse.

BLACK MAIL [*maile*, Fr., a small piece of money], a certain rent of money, coin, or other thing, anciently paid to persons upon or near the borders, being men of influence, and allied with certain robbers and brigands,

to be protected from their devastations; rendered illegal by 43 Eliz., c. 13. Also, rent paid in cattle, otherwise called neat-gild, and all rent not paid in silver, is called *reditus nigri* (black mail), by way of distinction from the *reditus albi* (blanch-firmes, or white rents.)

BLACK ROD, GENTLEMAN USHER OF, a chief officer of the Queen, deriving his name from the *Black Rod* of office, on the top of which reposes a golden lion, which he carries. During the session of Parliament he attends on the Peers, and to his custody all Peers impeached for any crime or contempt are first committed. *Black Book*, 255.

BLACK WARD, a subvassal, who held ward of the king's vassal.

BLADARIUS, a corn-monger, mealman, or corn-chandler.

BLADE, fruit, corn, hemp, flax, herbs, &c.

BLANCH FIRMES. In ancient times the crown rents were many times reserved in *libris albis* or blanch firmes, in which case the buyer was holden *de albare firmam*, viz., his base money or coin, worse than standard, was molten down in the Exchequer, and reduced to the fineness of standard silver, or, instead thereof, he paid twelve pence in the pound by way of addition. *Lowndes on Coins*, 5.

BLANCH HOLDING, an ancient tenure of the law of Scotland, the duty payable being trifling, as a penny or a peppercorn, &c., if required. 20 Geo. II., c. 50; 25 Geo. II., c. 20.

BLANCOFORDA, the ancient name of Blandford, in Devonshire.

BLANCUM CASTRUM, Blane castle, in Monmouthshire.

BLANK BAR, common bar; the name of a plea in bar, which, in an action of trespass, is resorted to to compel the plaintiff to assign the certain place where the trespass was committed.

BLANK BONDS, Scotch securities, where the creditor's name was left blank, and which passed by mere delivery, the bearer being at liberty to put in his name and sue for payment. Declared void by the act 1696, c. 25.

BLANKS, a kind of white money (value 8d.), coined by Henry the Fifth in those parts of France which were then subject to England; forbidden to be current in this realm by 2 Hen. VI., c. 9. Also, certain void spaces, sometimes left by mistake, in judicial proceedings, and which, if anything material be wanting, render the same void.

BLASPHEMY [*βλάπτειν*, Gk., to hurt, and *φήμη*, reputation], an offence against God and religion, by denying to the Almighty his being and providence, or by contumelious reproaches of our Saviour Christ. Also, all profane scoffing at the Holy Scripture, and exposing it to contempt and ridicule. It is both a spiritual and temporal offence. It is an offence at Common Law, for the Scriptures are the common law, upon which all other laws are founded; and it is not lawful

to publish even a correct account of the proceedings in a court of justice, if such an account contain matter of a scandalous, blasphemous, and indecent nature. Punishable by fine and imprisonment, or corporal punishment. 1 Geo. IV., c. 8; 4 *Bl. Com.* 59; 2 *Sam.* xii. 14; *Tit.* ii. 5; *Rev.* xiii. 6.

BLATUM BULGIUM, the ancient name of Bulness, in Cumberland.

BLAUNPAIN, *alias* **BLANEPAIN**, Whitbread.

BLE, sight, colour, &c.

BLENCH, **BLENCH-HOLDING**, see **ALBA FIRMA**.

BLESTIUM, the ancient name of Old Town, in Herefordshire.

BLETA [*bleche*, Fr.], peat or combustible earth dug up and dried for burning.

BLINKS, boughs broken down from trees and thrown in a way where deer are likely to pass.

BLOOD, kindred, lineage. It is a maxim that none shall claim as heir, who is not of the blood (*i. e.*, kindred) of the purchaser. *Co. Litt.* 12 a.

BLOODWIT, or **BLOUDVEIT** [*blod*, Sax., blood, and *wyte*, Old Eng., pity], an amercement for bloodshed; a customary fine, paid as a composition and atonement for shedding or drawing of blood. *Paroch. Antiq.* A riot wherein blood was spilled. *Scotch Law*.

BLOODY HAND. See **BACKBERIND**.

BLOSSEVILLA, the ancient name of Bloville, Blofield.

BOARD, in politics, an office under the control of the executive government, as the Board of Trade, the Board of Works, the Board of Admiralty, the Board of Ordnance, the business of which departments is conducted by officers specially appointed for that purpose.

BOCK-HORD, or **BOOK-HOARD**, a place where books, documentary evidence, or writings are kept.

BOCK-LAND, **BOC-LAND**, or **BOOK-LAND**, one of the original modes of tenure of manor land, also called charter-land or deed-land, which was held by a short and simple deed under certain rents and free services, and in effect differed nothing from the free-socage lands, whence have arisen most of the freehold tenants, who hold of particular manors, and owe suit and service to the same. 2 *Bl. Com.* 90.

It was land that had been severed by an act of government from the folcland, and converted into an estate of perpetual inheritance. It might belong to the church, to the king, or to a subject. It might be alienable and devisable at the will of the proprietor; it might be limited in its descent without any power of alienation in the possessor. It was often granted for a single life or for more lives than one, with remainder in perpetuity to the church. It was forfeited for various delinquencies to the state.

Estates in perpetuity were usually created by charter after the introduction of writing, and on that account bocland and land of

inheritance are often used as synonymous expressions. But at an earlier period they were conferred by the delivery of a staff, a spear, an arrow, a drinking horn, the branch of a tree, or a piece of turf; and when the donation was in favour of the church, these symbolical representations of the grant were deposited with solemnity on the altar; nor was this practice entirely laid aside after the introduction of title-deeds. There are instances of it as late as the time of the Conqueror. It is not therefore quite correct to say that all the lands of the Anglo-Saxons were either folcland or bocland. When land was granted in perpetuity, it ceased to be folcland; but it could not with propriety be termed bocland, unless it was conveyed by a written instrument.

Bocland was released from all services to the public, with the exception of contributing to military expeditions, and to the reparation of castle and bridges. These duties or services were comprised in the phrase—*trinoda necessitas*, which was said to be incumbent on all persons, so that none could be excused from them. The church indeed contrived, in some cases, to obtain an exemption from them, but in general its lands, like those of others, were subject to them. Some of the charters granting to the possession of the church an exemption from all services whatever, are genuine; but the greater part of them are forgeries.

Bocland might, nevertheless, be subjected to the payment of an annual rent to the state by its original charter of creation. We have an instance of this among the deeds of Worcester Cathedral, collected by Heming. Æthelbald, King of the Mercians, had, it appears, granted to Eanulf, grandfather of Offa, an estate of inheritance, burthensome with an annual payment of ale, corn, cattle and other provisions to a royal vill; and this estate, with the rent-charge attached to it, Offa afterwards gave in remainder to the see of Worcester, after his own life and that of his sons. Bocland might be held by freemen of all ranks and degrees.

The estate of the higher nobility consisted chiefly of bocland. Bishops and abbots might have bocland of their own, in addition to what they held in right of the church.

The Anglo-Saxon kings had private estates of bocland, and these estates did not merge in the Crown, but were devisable by will, gift, or sale, and transmissible by inheritance, in the same manner as bocland by subject.

The above extracts are from "*An Inquiry into the Rise and Growth of the Royal Prerogative in England*." By J. C. Allen, 1830, 143—151. See also *Kemble's Cod. Diplom.*, *Introd.* ciii.—cvi.

BODOTRIA, the ancient name of Edinburgh Firth.

BODUNA, the people of Gloucestershire and Oxfordshire were formerly called so.

BOIS, wood; *sub-bois*, underwood.

BOLERIUM PROM. See **ANTIVESTRUM**.

BOLHAGIUM, or BOLDAGIUM, a little house or cottage.

BOLT, a long narrow piece of silk or stuff.

BOLTING [*Bolt*, Sax., a house], a private arguing of cases in our inns of court.

BONA, this term, according to the civil law, includes all sorts of property, moveable and immoveable. *Story's Conf. Laws*, 375.

DE BONA FASSATO, Goodrick.

BONA FIDE, with good faith; implying the absence of all fraud and unfair dealing or acting, whether it consist in simulation or dissimulation. This term, both in this case and in the nominative also, frequently occurs in the Roman jurists. It can only be defined with reference to things opposed to it, namely, *male fides* and *dolus malus*, both of which phrases, and especially the latter, are often used in a technical sense. *Smith's Dict. of Antiq.*

Bona fide possessor facit fructus consumptos suos.—(By good faith a possessor makes profits his own consumptions.)

Bona fides non patitur ut idem bis exigatur.—(Good faith suffers not that the same thing should be twice exacted.)

Bona fidei possessor, in id tantum quod ad se pervenerit, tenetur. 2 Inst. 285.—(A tenant is bound to good faith in that only which may come to him.)

BONAUGHT, or BONAUGHTY, an exaction imposed on the people of Ireland, at the will of the lord, for relief of the knights called *Bonaghti*, who served in the wars. *Antiq. Hibern.* 60.

BONA FORUFACTA, goods forfeited; called by the civilians *bona confiscata*, because they belonged to the *fiscus*, or imperial treasury.

BONA MOBILIA, moveable effects and goods.

BONA NOTABILIA, extraordinary assets.

They are fixed by express canon (excepting in London, where the sum is 10*l.*), to be legal personal estate to the value of 5*l.* or upwards; though if several personal things, each under the value of 5*l.*, but collectively worth more than that sum, be dispersed in several dioceses, they constitute *bona notabilia*. A mere claim in the nature of a debt, however difficult to recover, if by possibility it may exceed 5*l.*, is *bona notabilia*, but not a devise for the payment of debts, that being merely equitable assets. There are, however, peculiar distinctions as to the places where different kinds of personal property shall be deemed *bona notabilia*. If *bona notabilia* lie in two or more dioceses, or in two or more peculiars within the same province, the probate or administration must be granted by the Prerogative Court of the metropolitan of the province; if they lie in different provinces, then the archbishop of each province must grant probate or administration of the goods in his province; if they lie in two dioceses of one province, and in one diocese of another province, the archbishop, in respect of the former, must grant probate, and in respect of the latter, the peculiar bishop. *Chit. Gen. Prac.*, vol. i., p. 523.

BONA PATRIA, an assize of countrymen or

good neighbours; it is sometimes called *assiza bone patrie*, when twelve or more men are chosen out of any part of the country to pass upon an assize, otherwise called *juratores*, because they are to swear judicially in the presence of the party, &c., according to the practice of Scotland. *Skene*.

BONA PERITURA, perishable goods.

BONA VACANTIA, stray goods. Those things in which nobody claims a property, and which belong to the Crown, by virtue of its prerogative. 1 *Bl. Com.* 298.

DE BONA VILLA, Bonevil.

BONA WAVIATA, goods waved or thrown away by a thief in his flight, for fear of being apprehended. They are given to the Crown by the law, as a punishment upon the owner for not himself pursuing the felon and taking away his goods from him. 1 *Bl. Com.* 296.

In the Roman law it was originally the property which a person left at his death, without having disposed of it by will, and without leaving any *heres*. Such property was open to occupancy; and so long as the strict laws of inheritance existed, such an event must not have been uncommon. A remedy was, however, found for this by the *bonorum possessio* of the *prætor*. *Smith's Dict. of Antiq.*

BONCHA [*bonna*, or *bunna*, Old Lat.], a rising bank, the bounds of fields.

BOND, a written obligation under seal, whereby a person binds himself, his heirs, executors, and administrators, to pay a certain sum of money, or do some other act, with a condition that if he do perform its exigency, the obligation shall be void, otherwise to remain in full force. He that enters into the bond is the obligor; he to whom it is given is the obligee. 2 *Bl. Com.* 340.

BONDAGE, slavery.

BOND-TENANTS, copyholders and customary tenants, are sometimes so called. *Calthorpe on Copyholds*, 51, 54.

Boni judicis est ampliare jurisdictionem. Chan. Prac. 329.—(It is the part of a good Judge to make the diction of law as comprehensive as possible.)

The late Lord Abinger, in *Russel v. Smyth*, 9 *M. & Wels.* 818, observed that, "the maxim of the English law is, to amplify its remedies, and without usurping jurisdiction, to apply its rules to the advancement of substantial justice." When rules of law have been found to work injustice, they have been *evaded* instead of being repealed. Obsolete or unsuitable laws, instead of being removed from the statute book, have been made to bend to modern usages and feelings. Instead of the legislature framing new provisions, as occasion has required, it has been left to able judges to invade its province, and arrogate to themselves the lofty privilege of correcting abuses and introducing improvements. The rules are thus left in the breasts of the Judges, instead of being put upon a right footing by legislative enactment. Much of the evil is, no doubt, attributable thus to

the supineness of the legislature, something to the narrowness of the rules of the Common Law; but the principal share, to the want of a proper understanding at what point *interpretation* ought to end, and *legislation* begin. *Dwarris on the Statutes*, 792. Mr. Baron Parke, in *Mirehouse v. Renwell*, 8 Bing. 515, on error in the House of Lords, thus expounds the true judicial feeling and determination in Westminster Hall:—"The precise facts stated by your Lordships have never, as far as we can learn, been adjudicated upon in any Court, nor is there to be found any opinion of them of any of our Judges, or of those ancient text writers to whom we look up as authorities. The case, therefore, is in some sense, new, as are many others which continually occur; but we have no right to consider, it because it is new, as one for which the law has not provided at all, and because it has not been decided, to decide it for ourselves, according to our own judgment of what is just and expedient. Our Common Law system consists in applying to new combinations of circumstances, those rules of law which we derive from legal principles and judicial precedents; and for the sake of attaining uniformity, consistency, and certainty, we must apply these rules when they are not plainly unreasonable or inconvenient, to all cases which arise; and we are not at liberty to reject them, and abandon all analogy to them, in those to which they have not hitherto been judicially applied, because we think that the rules are not as convenient or reasonable as we ourselves could have devised. It appears to me to be of great importance to keep this principle of decision steadily in view, not merely for the determination of the particular case, but for the interests of law as a science."

Boni judicis est causas litium dirimere. 2 Inst. 304.—(It is the duty of a good Judge to determine the occasions of law-suits.)

Boni judicis est iudicium sine dilatione mandare executioni. Co. Litt. 289.—(It is the duty of a good Judge to order judgment to be executed without delay.)

Boni judicis est lites dirimere; et interest reipublicæ ut sint fines litium. 4 Co. 15.—(It is the duty of a good Judge to determine litigations, and it concerns the public good that there be periods to legal strifes.)

These four maxims relate to the administration of justice and the prevention of strife. The principle of English law is to amplify its remedies, and, without usurping jurisdiction, to apply its rules to the advancement of substantial justice, while that system of law is best which confides as little as possible to the discretion of the Judge; that Judge the best, who relies as little as possible on his own opinion. *Russell v. Smyth*, 9 M. & W. 818; 6 Scott, N. R. 180. And although the law should be vindicated by speedy execution, yet it is not to be applied to further litigation; for, "*componere lites*"—the prevention of iniquitous litigation, is more the aim of an enlightened jurisprudence

than "*discordias alere*"—the stirring up of unjust strife.

BONIS NON AMOVENDIS, (that the goods be not removed). A writ addressed to the sheriff, where a writ of error is brought, commanding that the person against whom judgment is obtained, be not suffered to remove his goods, till the error be tried and determined. *Reg. Orig.* 131.

BONIUM, seu **BOVIUM**, Boverton, or Cowbridge, in Glamorganshire; also Bangor, in Flintshire.

Bonum defendentis ex integrâ causâ, malum ex quolibet defectu. 11 Co. 68.—(The good of a defendant arises from a perfect case, his harm from some defect.)

Bonum necessarium extra terminos necessitatis non est bonum. Hob. 144.—(Necessary good is not good beyond the bounds of necessity.)

Bonus iudex secundum æquum et bonum judicat, et æquitatem stricto juri præfert. Co. Litt. 24.—(A good Judge decides according to justice and right, and prefers equity to strict law.)

"I commend the Judge," said Lord Hobart, (*Hob.* 125,) "who seems fine and ingenious, so it tend to right and equity; and I condemn them who, either out of pleasure to shew a subtle wit, will destroy, or out of incuriousness or negligence will not labour to support, the act of the party, by the art or act of the law."

BOOK OF RATES, an account declaring the duties of customs. *Jacob.*

BOOK OF RESPONSES, an account which the director of the Chancery keeps, particularly to note a seizure, when he gives an order to the sheriff in that part to give it to an heir whose service has been returned to him. The form is *respondeat vice comes*, &c. *Scotch Dict.*

BOOTING, or **BOTING CORN**, [*bote*, or *boot*, Sax., compensation], rent-corn, anciently so called.

BORCOVICUS, and **BOROVICUM**, Berwick-upon-Tweed.

BORDAGIUM, see **BORDLODE**.

BORDARIA, [*bord*, Sax., *domus*, Lat.], a cottage.

BORDARI, or **BORDIMANNI** [*bords*, Old Gall., limits, borders], boors, husbandmen cottagers. *Domesday.*

BORDER WARRANT, a process granted by a Judge ordinary, on either side of the border between England and Scotland, for arresting the person or effects of an inhabitant of the opposite side, until he find security, *judicium sisti*.

BORD-HALFPENY [*bord*, Sax., a table, an *halpeny*, or half-penny], a customary small toll paid to the lord of the town for setting up boards, tables, booths, &c., in fairs and markets.

BORDLANDS, the demesnes which a lord keeps in his own hands for the maintenance of his board or table. *Bract.* l. 4, t. 3, c. 1.

BORDLODE, or **BORDAGE**, a service required of tenants to carry timber out of the lord's woods to his house, or it is said to

the quantity of food or provision, which the *bordarii* or *bordmen* paid for their *bord-lands*. The old Scots had the term of *burd* and *meet-burd* for victuals and provisions, and *burden-sack* for a sack full of provender; whence probably came our word *burden*.
Spelm.

BORD-SERVICE, a tenure of *bord-lands*.

BORD-BRIGCH [*borg-bryce*, or *burg-brych*, Sax.], a breach or violation of suretyship, pledge-breach, or breach of mutual fidelity.

BOREL-FOLK, country people, from the Fr., *bourre*, *flocus* a lock of wool, because they covered their heads with such stuff. *Blount*.

BORGH-UPON WEIR OF LAW, a finding of caution to answer the requisitions of the law. *Scotch Dict.*

BORLASIUS, *Borlace*.

BOROUGH [*burg*, Fr., *burgus*, Lat., *borhoe*, or *burg*, Sax.], originally a walled town or other fortified place, perhaps from *ἰσχυρος*, a castle, but now a town either corporate or not, that sends burgesses to Parliament. By the Reform Act, 2 Wm. IV., c. 45, § 79, wherever the words "city or borough," or "cities or boroughs" may occur throughout the act, those words shall be construed to include, except there be something in the subject or context manifestly repugnant to such construction, all towns corporate, cinque ports, districts or places within England and Wales, which shall be entitled, after this act shall have passed, to return a member or members to serve in Parliament, other than counties at large, and ridings, parts and divisions of counties at large, and shall also include the town of Berwick-upon-Tweed.

As to the right of voting in *boroughs*, it may be here stated generally, that, independently of the old rights of voting in scot and lot boroughs, and corporation towns, the Reform Act confers a right of voting upon all occupiers, either as owner or tenant of any house or building of the clear annual value, either alone or with land, of 10*l.*, provided the party has been in occupation for twelve months before the 31st day of July preceding the registration, has resided for six months previously within the borough, or seven miles from the same, has been rated to the poor during all the time of occupation, and has paid, before the 20th day of July, preceding, all rates and assessed taxes up to the 6th day of April preceding. The receipt of parochial relief forms a disqualification, but that provision does not extend to a county voter.

BOROUGH COURTS, private and limited species of tribunals, held by prescription, charter, or act of parliament. They are erected in particular districts for the convenience of the inhabitants, that they may prosecute small suits, and receive justice at home. 19 Geo. III. c. 70; 2 & 3 Wm. IV., c. 74; 1 Bl. Com. 80.

BOROUGH HEADS, borough-holders, bors-holders, or burs-holders.

BOROUGH ENGLISH, a custom evidently

of Saxon origin, and so named to distinguish it from the Norman customs. It is supposed to be derived from the Tartars, and may be a remnant of the pastoral state of the Germanic Barbarians, described by Cæsar and Tacitus. By this custom, then, the youngest son, and not the eldest, succeeds to the burgage tenement on his father's death, and it is based on this reason, because the youngest son, on account of his tender age, is not so capable as the rest of his brethren to keep himself. Among the pastoral tribes, the sons, as soon as they attained the proper age, migrated from the paternal habitation, with an allotment of cattle, to seek a residence elsewhere; the youngest son usually continued with his father, and thus became the heir to his house. The vulgar notion that this custom arose out of the right of concubinage which the lord had with his tenants' wives on their wedding night, and that therefore the land descended not to the eldest son, but to the youngest, who was with greater probability the true child of the tenant, is altogether exploded, for there is no evidence of such a right having ever existed in England, although it certainly seems to have prevailed in Scotland, until it was abolished by Malcolm III. (*Reg. Mag. l. 4, c. 31*), who commuted it for a fine, payable on the tenant's marriage, which payment is now known as *Marcheta*.

This customary descent is opposed to descent at Common Law: it is confined to the youngest son only, if he die without issue, the youngest brother shall not inherit the land, *unless* it be by some special custom (supported by the two essential qualities of time immemorial and peaceable usage), but the inheritance will descend according to the Common Law, for customs must always be taken strictly, and, therefore, if the youngest son die, leaving nephews only, the eldest shall take, but if he die during his father's lifetime, his lineal representative (if any), although a daughter, shall take, even if the lands to which such a custom is annexed be purchased after such youngest son's death. 1 Roll. Abr. 624, pl. 2; Salk. 224. This custom obtains in the manor of Lambeth, Surrey, in the manors of Hackney, St. John of Jerusalem in Islington, Heston, and Edmonton in Middlesex, and in other counties.

BOROUGH SESSIONS, courts established in Boroughs under the Municipal Corporations' Act (4 & 5 Wm. IV., c. 76). They are held by the recorders of the respective boroughs once a quarter, or oftener if they think fit, and at times to be fixed by them. The jurisdiction is over such offences as are cognizable by the County Sessions, whose powers extend to all boroughs which may not have petitioned for a separate court by virtue of § 103, of the Municipal Corporations' Act.

BORROWING, asking a loan; taking money on credit. For the rights and duties of borrowers, consult *Story on Bailments*, 231, 234, 280.

BORSHOLDERS, borough holders.

BORTMAGAD [*bord*, Sax., *domus* and *magad*, *ancilla*], a housemaid.

BOSCAGE [*bosco*, Ital., *silva*], food which wood and trees yield to cattle, as mast, &c.

BOSCARIA, woodhouses, or oxbouses, from *bos*, Lat.

DE BOSCO, bois, boys.

DE BOSCO ARSO, brentwood, or burntwood.

DE BOSCO BOARDI, Borhard.

BOSCUS, all manner of wood; [*bosco*, Ital., *bois*, Fr.], boscus is divided into high wood or timber; *hautbois*, and coppice, or underwoods, *sub-boscus*, *sub-bois*: but the high wood is properly called *saltus*, and in *Fleta* we read it *maeremium*.

BOSINNUS, a rustical pipe.

BOSTAR, an ox-stall.

BOTE [Sax., synonymous to *estovers*, Fr., from *estoffer*, to furnish], necessities for the maintenance and carrying on of husbandry. The owner of an estate for life or for years is entitled, unless expressly restrained by the terms of the conveyance or devise, to reasonable estovers or botes, i. e., necessary wood, such as house-bote, plough-bote, cart-bote, and hay-bote, or hedge-bote. *House-bote* is a sufficient allowance of wood from off the estate to repair or burn in the house, and sometimes termed fire-bote; *plough-bote* and *cart-bote* are wood to be employed in making and repairing all instruments of husbandry; and *hay-bote* or *hedge-bote* is wood for repairing of hays, hedges, or fences.

There was also *man-bote*, which was a compensation or amends for a man slain, &c. *Lamb. c. 99*.

BOTELESS, or **BOOTLESS**, a vain attempt, without emendation.

BOTELLARIA, a buttery or cellar, in which the *butts* and *bottles* of wine and other liquors are deposited.

BOTHA, a booth, stall, or standing in a fair or market. *Mon. Angl.*, 2 par. fo. 132.

BOTHAGIUM, or **BOOTHAGE**, customary dues paid to the lord of a manor or soil, for the pitching or standing of booths in fairs or markets. *Paroch. Antig.* 680.

BOTHNA, or **BUTHNA**, a park where cattle are enclosed and fed; a barony, lordship, &c. *Skene*.

BOTILER OF THE KING [*pincerna regis*], an officer that provides the king's wines, who (according to *Fleta*, l. 2, c. 21) may, by virtue of his office, choose out of every ship laden with sale wines, one cask before the mast, and one behind. 25 *Edwd. III.*, st. 5, c. 21.

BOTTOMRY BOND, or **CONTRACT**, a species of mortgage or hypothecation of a ship, by which her keel or bottom is pledged (*partem pro toto*) as a security for the repayment of a sum of money. If the ship be totally lost, the lender loses his money, but if she return safely, he recovers his principal, together with the interest agreed upon, however it may exceed the legal rate of interest, which is allowed as valid in all trading nations, for the benefit of commerce, and as a *pretium periculi* for the extraordinary

hazard run. *Abbott on Shipping*, p. 2, c. 3; 2 *Bl. Com.* 457.

BOVATA TERRÆ, as much land as an ox can plough. See *Oxgang*.

BOUCHE OF COURT, or **BUDGE OF COURT**, a certain allowance of provision from the king to his knights and servants, who attended him on any military expedition.

BOUGHT AND SOLD NOTES. The practice of licensed brokers is to keep books wherein they enter or register the terms of any contract they effect, and the names of the parties, which is legally binding, as when the broker for a seller treats with a buyer, he is deemed the agent of both, and he, in strictness, should sign the book, and deliver a transcript or memorandum thereof to each party, which is called a *bought and sold note*, and contains all particulars. As these notes contain the essential parts of the bargain, they will suffice in the absence of a corresponding entry in the broker's book; but if these notes describe the particulars differently or incorrectly, as one species of goods for another, or erroneously state the terms, no contract arises, and a variation of this nature cannot be corrected by a reference to the broker's book.

BOVERIUM, or **BOVERIA**, an ox-house.

BOVETTUS, a young steer, or castrated bullock.

BOVICULA, an heifer or young cow.

BOUGH OF A TREE. It gave seisin of land, to hold of the donor *in capite*.

BOUND, or **BOUNDARY**, the utmost limits of land, whereby the same is known and ascertained. See *ABUTTALS*.

BOUNDARIES OF COUNTIES, &c. See the Boundary Act, 2 & 3 Wm. IV., c. 64, as to the divisions of counties, and the limits of cities and boroughs in England and Wales, in so far as respects the election of members to serve in Parliament.

BOUND-BAILIFFS, officers who arrest debtors, &c., and who enter into bonds for their good behaviour. The vulgar phrase "bum-hailiff," is a corruption of this word.

BOUNTY, a premium paid by Government to the producers, exporters, or importers of certain articles, or to those who employ ships in certain trades, with a view of encouraging the establishment of some new branch of industry, or of fostering and extending a trade that is believed to be of paramount importance. Several bounties have been abolished. 3 & 4 Wm. IV., c. 52.

BOUNTY OF QUEEN ANNE, a royal charter, which was confirmed by 2 Ann., c. 11, whereby all the revenue of first fruits and tenths is vested in trustees for ever, to form a perpetual fund for the augmentation of poor livings. After the appropriation of the revenue arising from the payment of first fruits and tenths to the augmentation of small livings, it was considered a proper extension of this principle to exempt the smaller livings from the incumbrance of those demands; and for that end, the bishops

of every diocese were directed to enquire and certify into the Exchequer, what livings did not exceed 50*l.* a year, according to the improved value at that time; and it was further provided that such livings should be discharged from those dues in future. It has been still further regulated by subsequent statutes, viz., 5 Ann, c. 24; 6 Ann, c. 27; 1 Geo. 1, st. 2, c. 10; 3 Geo. 1, c. 10.

These trustees were erected into a corporation, and have authority to make rules and orders for the distribution of this fund. The principal rules they have established are, that the sum to be allowed for each augmentation shall be 200*l.*, to be laid out in land, which shall be annexed for ever to the living; and they shall make this donation, first, to all livings not exceeding 10*l.* a year, then to all livings not above 20*l.*, and so in order, whilst any remain under 50*l.* a year. But when any private benefactor will advance 200*l.*, the trustees will give another 200*l.* for the advancement of any living not above 45*l.* a year, though it should not belong to that class of livings which they are then augmenting.

By the 46 Geo. III., c. 133, a very noble donation of 6000*l.* a year was granted for the augmentation of small livings not exceeding 150*l.* a year. The Statute enacts that all such livings may be discharged from the payment of the land-tax, without any consideration for it, provided the whole annual account shall not exceed 6000*l.* 1 *Bl. Com.* 285; 2 *Burn's Ec. L.* 260.

BOW-BEARER, an under officer of the forest, whose duty it is to oversee and true inquisition make, as well of sworn men as unsworn, in every bailiwick of the forest; and of all manner of trespasses done, either to vert or venison, and cause them to be presented without any concealment, in the next court of attachment, &c. *Crompt. Juris.* 201.

BOWYERS, manufacturers of bows and shafts. An ancient company of the city of London. 12 *Edw. IV.*, c. 2; 33 *Hen. VIII.*, c. 6; 8 *Eliz.*, c. 10.

BRACELETS, hounds or beagles of the smaller or slower kinds.

BRACENARIUS, a huntsman or master of the hounds.

BRACETUS, a hound. *Mon. Ang.*, t. 2, p. 283.

BRACHYLOGY, the method of expressing a sentence or argument concisely.

BRACINUM, a brewing; the whole quantity of ale brewed at one time, for which *tolsestor* was paid in some manors. *Brecina*, a brew-house.

BRANDING in the *hand* or *face* with a hot iron. A punishment inflicted by law for various offences, after the offender had been allowed benefit of clergy. *Abolished.*

BRASIATOR [*brasium*, Lat., malt]; a malster, a brewer. *Old Records.*

BRASIUM, malt.

BRAWLING, the offence of quarrelling, or creating a disturbance in the church or churchyard. Therefore were quarrelsome

words, which are neither an affray nor an offence in any other place, are penal here. It was enacted by 5 & 6 Edw. VI., c. 4, that if any person shall, by words only, quarrel, chide, or brawl in a church or churchyard, the ordinary shall suspend him, if a layman, *ab ingressu ecclesie* (from the entrance of the church); and if a clerk in orders, from the ministration of his office during pleasure. And if any person in such church or churchyard proceed to smite or lay violent hands upon another, he shall be excommunicated *ipso facto*, or if he strike him with a weapon, or draw any weapon with intent to strike, he shall, besides excommunication, being convicted by a jury, have one of his ears cut off, or having no ears, be branded with the letter "F" in his cheek. But this punishment was repealed by 9 Geo. IV., c. 31, § 1. With respect to the malicious or contemptuous disturbance of a congregation, or molestation of a minister during the celebration of divine service, see 1 M., c. 3; and 1 W. & M., c. 18; also 52 Geo. III., c. 155, § 12; 4 *Bl. Com.* 145.

BREACH OF CLOSE, an unwarrantable entry on another's land; for every man's land is in the eye of the law inclosed and set apart from his neighbour's, and that either by a visible and material fence, as one field is divided from another by a hedge or by an invisible boundary, existing only in the contemplation of law, as when one man's land adjoins to another's in the same field. Every such entry or breach of a man's close carries necessarily along with it some damage or other; for, if no other special loss can be assigned, yet still the words of the writ itself specify one general damage, viz., the treading down and bruising his herbage. *Cro. Eliz.* 420.

BREACH OF COVENANT, a violation of a covenant contained in a deed either to do a direct act or to omit it: it is a civil injury. 3 *Bl. Com.* 155.

BREACH OF DUTY, the not executing any office, employment, trust, &c., in a proper manner, for every person who undertakes the duties of any office, &c., contracts with those who employ and trust him to perform it with integrity, diligence, and skill; and if by his want of either of those qualities any injury accrues to individuals, they have, therefore, their remedy in damages by a special action on the case. 3 *Bl. Com.* 163.

BREACH OF PEACE. Offences against the public, which are either actual violations of the peace, or constructively so by tending to make others break it. Both of these species are either felonious, or not felonious. The *felonious* breaches are, 1, The riotous assembling of twelve persons or more, and not dispersing upon proclamation. 2, Unlawful hunting in any legal forest, park, or warren, not being royal property, by night, or with painted faces. 1 *Hen. VIII.*, c. 7; 9 Geo. I., c. 22. 3, Knowingly sending any letter without a name or with a fictitious name, demanding money, venison, or any other

valuable thing, or threatening without any demand, to kill any of the Queen's subjects, or to fire their houses, outhouses, barns, or ricks, 7 & 8 Geo. IV., cc. 27, 29. 4, Pulling down or destroying any lock, sluice, or floodgate erected by authority of Parliament on a navigable river. 7 & 8 Geo. IV., c. 30. The remaining offences are not felonious. 5, Affrays. 6, Riots, routs, and unlawful assemblies, which must have three persons at least to constitute them. 7, Tumultuous petitioning, which was carried to an enormous height in the times preceding the great rebellion, wherefore by 13 Car. II., st. 1, c. 5, it is enacted that not more than twenty names shall be signed to any petition to the King or either House of Parliament for any alteration of matters established by law in church or state, unless the contents thereof be previously approved, in the country by three justices, or the majority of the grand jury at the assizes or quarter sessions, and, in London, by the Lord Mayor, aldermen, and common council; and that no petition shall be delivered by a company of more than ten persons, on pain in either case of incurring a penalty not exceeding 100*l.* and three months' imprisonment. 8, Forcible entry or detainer, which is committed by violently taking or keeping possession of lands or tenements with menaces, force, and arms, and without the authority of the law. 9, Riding, or going armed, with dangerous or unusual weapons, terrifying the good people of the land. 10, Spreading false news, 12 Ric. II., c. 11. 11, False and pretending prophecies with intent to disturb the peace, as they raise enthusiastic jealousies in the people, and terrify them with imaginary fears. These are the actual breaches of the peace; the remaining are constructive. 12, Challenges to fight, either by word or letter, or to be the bearer of such challenge. 13, Libels, which, taken in their largest and most extensive sense, signify any writings, pictures, or the like, of an immoral or illegal tendency; but in the sense of a constructive breach of the peace, they are malicious defamations of any person, and especially a magistrate, made public by either printing, writing, signs, or pictures, in order to provoke him to wrath, or expose him to public hatred, contempt, and ridicule. Consult the recent Statute amending the law respecting defamatory words and libels, 6 & 7 Vict., c. 96. 4 Bl. Com., chap. xi.

BREACH OF POUND, the breaking any pound or place, where cattle or goods distrained are deposited, to rescue such distress; it is an indictable offence. See **POUND BREACH**.

BREACH OF PRISON, an escape by a prisoner lawfully in prison.

BREACH OF PROMISE, a violation of one's word or undertaking, such as the breach of the condition of a bond, &c.

BREACH OF TRUST, a violation of duty by a trustee, executor, or other person in a fiduciary position. The Court of Chancery

has adopted two principles in regard to the liability, consequent upon a breach of trust: 1st. That with a view not to deter persons from undertaking a trust, the Court is extremely liberal, and will so determine as not to strike a terror into mankind, acting for the benefit of others, and not for their own; and will endeavour to deliver a trustee from any mischief that may happen from a misapplication of trust-money, and where executors intend fairly to discharge their duty, the Court will not hold them liable upon slight grounds. 2dly. That care must be had to guard against an abuse of their trust. 13 Ves. 410.

BREAKING OF ARRESTMENT, an action wherein it is narrated, that though arrestment was laid out, payment nevertheless was made, the pursuer, therefore, concludes that the breaker should refund him, and besides should be punished according to law. *Scotch Dict.*

BRECCA [*breche*, Fr.], a breach or decay.

BRECINA. See **BRACINUM**.

BREDE, broad, also deceit. *Bract*.

BREDWITE [*bread and wite*, Sax.], a fine or penalty imposed for defaults in the assize of bread. *Paroch. Antiq.* 114.

BREHON, the Irish name for a Judge.

BREHON LAW, a rule of right, unwritten, but delivered by tradition from one to another, in which oftentimes there appeared great show of equity in determining the right between party and party, but in many things repugnant quite, both to God's laws and man's. This law was formally abolished, 40 Edwd. III., it being unanimously declared to be indeed no law, but a lewd custom crept in of later times. *Spencer's State of Ireland*, p. 1513.

BRENAGIUM, a payment in bran, which tenants anciently made to feed their lord's hounds.

BRESINA, wether-sheep. *Mon. Ang.*, t. 1, c. 406.

BRETOYSE, or **BRETOISE**, the law of the Welsh marshes, observed by the ancient Britons.

BREVE, a writ, by which a person is summoned or attached to answer an action, complaint, &c., or whereby anything is commanded to be done in the courts, in order to justice, &c. It is called *breve*, from the brevity of it, and is addressed either to the defendant himself, or to the Chancellors, Judges, Sheriffs, or other offices. *Skene, de verb "Breve."*

Breve judiciale debet sequi suum originale, et accessorium suum principale. Jenk. Cent. 292.—(A judicial writ ought to follow its original, and an accessory its principal.)

Breve ita dicitur, quia rem de qua agitur, et intentionem petentis, paucis verbis breviter enarrat. 2 Inst. 39.—(A writ is so called, because it briefly states, in few words, the matter concerning which it treats, and the object of the party seeking relief.)

Breve judiciale non cadit pro defectu formæ. Jenk. Cent. 43.—(A judicial writ fails not through defect of form.)

An original writ (*breve originale*) is a

mandatory letter issuing out of the common law jurisdiction of the Court of Chancery under the Great Seal, and in the Queen's name, addressed to the sheriff of the county where the injury is alleged to have been committed, containing a summary statement of the cause of complaint, and requiring him to command the defendant to satisfy the claim; and on his failure to comply, then to summon him to appear in one of the Superior Courts of Common Law, there to account for his non-compliance. In some cases, however, it omits the former alternative, and requires the sheriff simply to enforce the appearance. It was formerly essential to the due institution of all actions in the Superior Courts, that they should commence by original writ; in the case of *real* actions this is still necessary, but not so in *personal* actions (2 Wm. IV., c. 39), which commence by writ of summons as enacted by the 2d sec. of 1 & 2 Vic., c. 110; neither is an original writ issued in the *mixed* action of ejectment, the proceedings being fictitious, the declaration merely states the cause of action. *Judicial* writs are those issued subsequently to the original writ out of a Court of Common Law, during the progress of an action. They issue under the private seal of the Court, and not under the Great Seal of England, and are tested not in the Queen's name, but in that of the chief, or, if there be no chief, of the senior puisne judge. 3 Bl. Com., c. 19; *Step. Plead.*

BREVE PERQUIRERE, to purchase a writ or license of trial, in the King's courts, by the plaintiff *qui breve perquisivit*; whence the usage of paying 6s. 8d. fine to the Crown where the debt is 40l., and of 10s. where the debt is 100l., &c., in suits and trials for money due upon bond, &c.

BREVE DE RECTO, a writ of right or license for a person ejected out of an estate, to sue for the possession of it when detained from him.

BREVIAMAGISTRALIA, official writs framed by the clerks in Chancery to meet new injuries, to which the old forms of action were inapplicable. 4 Reeves, 426.

Brevia, tam originalia quam judicialia, patiuntur anglica nomina. 10 Co. 132.—(Writs, as well original as judicial, bear English names.)

BREVIATESTATA, written memoranda, introduced to perpetuate the tenor of a conveyance and investiture, when grants by parol became productive of dispute and uncertainty. To this end they registered in the deed the persons who attended as witnesses, which was anciently done without their own signatures (writing not then being a general accomplishment), but they merely heard the deed read, and then the clerk added their names in a sort of memorandum, thus "*hij testibus, Johanne Moore, Jacobo Smith, et aliis ad hanc rem convocatis.*" The modern system of conveyancing is an elaborate extension upon these *brevia testata*. 2 Bl. Com. 307.

BREVIBUS ET ROTULIS LIBERANDIS,

a writ or mandate to a sheriff to deliver to his successor the county, and the appointments with the rolls, briefs, remembrance, and all other things belonging to his office. *Reg. Orig.* 295.

BRIBERY [*briber*, Fr., to devour or eat greedily], the taking by a person in a judicial or public office, any fee, gift, reward, or brocade, to influence his behaviour in his office, or the taking or giving a reward for appointing another to a public position. As to bribery at elections for members of Parliament, the Legislature have, by 2 Geo. II., c. 44, § 7, distinctly defined in what it consists, both as it relates to a voter and to a candidate. The voter is guilty of bribery, if he *ask*, receive, or take, or agree, or contract for any money, &c., to give or to forbear to give his vote. The candidate is guilty of bribery, if he, by any gift or reward, or by any promise, agreement, or security for any gift or reward, *corrupt* or *procure* any person to give or refuse his vote. In the voter it is a crime to *ask*, but the *offer* on the part of the candidate, which appears to be, as it were, the counterpart of a request by the elector, seems to have been studiously omitted in the second part of the clause, and an actual corruption or procurement is made necessary to complete the offence. Therefore, the voter's consent is essential, for otherwise no person can be said to have been corrupted. The reason for this distinction is very substantial and important. It would be a dangerous and unjust thing to leave a candidate, who in the course of his canvass must solicit the votes of a number of electors, at the mercy of any one of them, who could be brought to swear, that he accompanied his solicitation with the offer of a bribe. But where his own consent constitutes part of the offence, he will be compelled, in accusing the candidate, to accuse himself also; from which it will generally follow, that the proof of such crimes will be sought for, in the more indifferent and unsuspected testimony of a third person. *Montagu and Neale on Elections*, part 2, p. 270.

BRIBOUR [*bribeur*, Fr.], a pilferer of other men's goods. 28 Edw. II., c. 1.

BRICOLIS, an engine by which walls were beaten down. *Blount*.

BRIDEWELL, a house of correction.

BRIDGE [*γέφυρα*, Gk., *pons*, Lat., *bric*, Sax.], a building of brick, stone, wood, or iron, erected across a river, ditch, valley, or other place otherwise impassable, for the common ease and benefit of travellers. Public bridges, which are of general convenience, are of common right to be repaired by the whole inhabitants of that county in which they lie. If the bridge be within a city or town corporate, the inhabitants of such city and town corporate shall repair it; if within a riding, the inhabitants of the riding shall repair it. The inhabitants of a county, &c., are, therefore, bound to repair every public bridge within it; unless, when indicted for the non-repair of it, they can show by their plea that

some other person is liable, *ratione tenuræ*; and every bridge in a highway is, by 22 Hen. VIII., c. 5, deemed a public bridge for this purpose. If part of a bridge be within one county, &c., and the other part within another county, &c., each county shall repair that part of the bridge which is within it. Besides the bridge, the country is bound to repair 300 yards of the road adjoining each end of it. As to the offence of pulling down a bridge, see 7 & 8 Geo. IV., c. 30, § 17.

BRIDGE-MASTERS, persons chosen by the citizens, who have certain fees and profits belonging to their office, which is the case of London Bridge. *Lex. Lond.* 283.

BRIEF [*brevis*, Lat., *brief*, Dutch, a letter], an abbreviated statement of the pleadings, proofs, and affidavits at law, or of the bill, answer, and other proceedings in equity, with a concise narrative of the facts and merits of the plaintiff's case, or the defendant's defence, for the instruction of counsel at the trial or hearing. Arrangement and compression without any material omission should be carefully attended to.

BRIEF AL' EVESQUE, a writ to the bishop, which, in *quare impedit*, shall go to remove an incumbent, unless he recover or be presented *pendente lite*. 1 Keb. 386.

BRIEF OUT OF THE CHANCERY, a writ or command to a Judge that he examine by an inquest, whether a man be nearest heir. *Scotch Dict.*

BRIEF OF DISTRESS, an obsolete writ, which issued out of Chancery after decree obtained against any landlord to distress his readiest goods, according to the old custom. *Ibid.*

BRIEF OF MORTANCESTRY, that which is used for entering of all heirs of defuncts. *Ibid.*

BRIEFS FOR COLLECTING CHARITIES, licenses to make collection for repairing churches, restoring loss by fire, &c. 4 Ann., c. 14.

BRIGA [*brigue*, Fr.], debate, contention.

BRIGANDINE [*lorica*], a coat of mail or ancient armour, consisting of numerous jointed scale-like plates, very pliant and easy for the body, mentioned in 4 & 5 P. & M., c. 2; Jer. xlv. 4, and li. 3.

BRIGANTES, the ancient name for the inhabitants of Yorkshire, Lancashire, Durham, Westmoreland, and Cumberland.

BRIGBOTE, or **BRUG-BOTE** [*brig*, Sax., *pontus*, and *bote*, *compensatio*], the contribution to the repair of bridges, walls, and castles, which by the old laws of the Anglo-Saxons might not be remitted. *Fleta*, l. 1, c. 47.

BROCAGE, the wages or hire of a broker; also termed *Brokerage*, 12 R. II., c. 2.

BROCELLA [*brusca*, obs. Lat., *broce*, Fr.], a wood, a thicket or covert of brushes and brush-wood, hence *brouce* of wood, and *browsing* of cattle.

BROCHA [*broche*, Fr.], an awl or large packing needle; also a spit, hence to *broach* or pierce a barrel.

BROCHIA, a great can or pitcher. *Bract.*, l. 2, t. 1, c. 6.

BRODE-HALFPENNY, or **BROAD-HALFPENNY**. See **BORD-HALFPENNY**.

BROKER [*broceur*, Fr., *tritor*, Lat., a person who breaks into small pieces], an agent employed to make bargains and contracts between other persons, in matters of trade, commerce, and navigation, for a compensation commonly called a brokerage. Domat has given (*B. l.*, tit. 17, § 1, *art.* 1,) a very full and exact description, according to the sense of our law: "The engagement (says he) of a broker is like to that of a proxy, a factor, and other agent; but with this difference, that the broker being employed by persons, who have opposite interests to manage, he is, as it were, agent both for the one and the other, to negotiate the commerce or affair in which he concerns himself. Thus his engagement is twofold, and consists in being faithful to all the parties, in the execution of what every one of them entrusts him with. And his power is not a trust, but to explain the intentions of both parties, and to negotiate in such a manner, as to put those who employ him in a condition to treat together personally."

Where he is employed to buy or sell goods, he is not entrusted with the custody or possession of them, and is not authorised to buy or sell them in his own name. He is, strictly, therefore, a middle-man, or intermediate negotiator between the parties, and for some purposes (as that of signing a contract within the Statute of Frauds) he is treated as the agent of both parties, but primarily he is deemed merely the agent of the party by whom he is originally employed. A broker being personally confided in, cannot ordinarily delegate his authority to a sub-agent or clerk under him, or to any other person, unless the principal give an assent, either express or implied, thereto. A broker differs from an auctioneer in two respects; a broker may buy as well as sell, but an auctioneer can only sell; a broker cannot sell personally at public auction, for that is the appropriate function of an auctioneer, but he may sell at private sales, which an auctioneer (as such) does not.

There are various sorts of brokers now employed in commercial affairs, whose transactions form, or may form, a distinct and independent business. Thus, for example, there are exchange and money brokers, stock brokers, ship brokers, and insurance brokers, who are respectively employed in buying and selling bills of exchange, or promissory notes, railway scrip, goods, stocks, ships, or cargoes; or in procuring freights or charter parties. The character of a broker is also, sometimes, combined in the same person with that of a factor. In such cases, we should carefully distinguish between his acts in the one character and in the other, as the same rules do not always precisely apply to each. See **FACTOR**. The Romans called brokers

Prosenetæ. Dig. Lib. 50, tit. 14, l. 2;

Story's Comm. on Agency, p. 24.

BROKERAGE, the commission or per centage paid to brokers on the sale or purchase of bills, funds, goods, &c.

BROK, an old sword or dagger.

BROSSUS, bruised or injured with blows, wounds, or other casualty. *Cowel.*

BROTHEL HOUSES [*bordel*, Fr.], lewd places, the habitation of prostitutes. They were formerly allowed in certain places, and especially on the Bank Side, in *Southwark*, where they had signs before their doors in like manner as inns and ale houses. By 14 *Ric. II.*, it was enacted that no estews or brothel houses should be kept in *Southwark*, but in the common places appointed therefor. Of these, before the reign of Hen. VII., there were eighteen allowed; but the King for a long time forbade them. Afterwards, twelve, and no more, were permitted. But finally, Hen. VIII., by proclamation, in the 37th year of his reign, suppressed them all. And so odious were they become, that in leases of houses an express condition was inserted, that the lessees should not suffer, harbour, or keep any lewd women within the said house, &c. Any persons going to these places is subject to be imprisoned till he give security for good behaviour. 4 *Inst.* 205. See **BAWDY HOUSE**. A *brothel-man*, or *borelman*, was a loose idle fellow; a *feme bordelier*, or *brothelier*, a common whore.

BRUDHOTE. See **BRIGBOTE**.

BRUERRE [*erisa*, Lat., heath], heath-ground.

BRUERIA [*brær*, Sax., briar], thorns, briars, heath. *Par. Ant.* 620.

BRUILLUS [*breil*, *breuil*, Fr., a thicket], a clump of trees in a park or forest.

BRUILLETUS, a small coppice or wood.

BRUNETA. See **BURNETA**.

BRUSCIA, a wood. *Mon. Ang.*, t. 1, fol. 773.

BUBBLES [*bobbel*, Dutch], projects started by dishonest individuals to cheat and rob the public. The South-Sea project, for example. The 6 *Geo. I.*, c. 18, punished such fraudulent undertakings; but that act was repealed by 6 *Geo. IV.*, c. 91. The Legislature should interfere to put down the abominable bubbles of the present day—railway schemes—ruining adventures, to wit. Statements, however, deceitfully published, and made for the purpose of fraud, subject the contrivers to indictments for a misdemeanour on the information of a party grieved.

BUCKLARIUM, a buckler. 26 *Edw. I.*, m. 8.

BUCKSTALL, a toil to take deer. 4 *Inst.* 306.

BUCKWHEAT, French wheat, called in Essex, *brank*, and in Worcestershire, *crap*. 15 *Car. II.*, c. 5.

BUCINUS, a military weapon for a footman.

BUDGET, an annual statement of the public finances, developing the minister's ways and means, laid before the House of Commons by the Chancellor of the Exchequer.

BUGGERY [*bugarone*, or *buggerare*, Ital.], a detestable and abominable sin, amongst

Christians not to be named, committed by carnal knowledge against the ordinance of the Creator and order of nature, by mankind with mankind, or with brute beast, or by womankind with brute beasts. 3 *Inst.* 58; 9 *Geo. IV.*, c. 31, § 15.

BUILDING, a house or other erection. In order as much as possible to prevent the damage consequent upon fires happening in crowded streets, the 14 *Geo. III.*, c. 78, amended by 25 *Geo. III.*, c. 77, usually called the Building Acts, were passed. They are confined in their operation to the cities of London or Westminster, and other parishes and places in the weekly bills of mortality, the parishes of St. Mary-le-bone, Paddington, St. Pancras, and St. Luke, at Chelsea.

As to setting fire to, and stealing from buildings, see 7 & 8 *Geo. IV.*, c. 29, § 44, and 7 & 8 *Geo. IV.*, c. 30, § 2.

BUL, in the ancient Hebrew chronology, the eighth month of the ecclesiastical, and the second of the civil year, since been called *Marshevan*, and answers to our October.

BULL [*bulia*, Lat., a stud, or boss], a brief or mandate of the Pope or Bishop of Rome, so called from the seal of lead or gold affixed to it, upon which was engraved on one side an image of St. Paul on the right of a cross, and that of St. Peter on the left, and on the other the Pope's name, and the year of his pontificate. To procure, publish, or put in use any of these is made high treason by 13 *Eliz.*, c. 2, and 7 *Ann.*, c. 21.

BULL, and **BOAR**, well known animals, which, by the custom of some places, the parson is obliged to keep for the use of the parishioners, in consideration of his having tithes of calves and pigs, &c. 1 *Roll. Abr.* 559.

BULLETIN, an official account of public transactions or matters of importance.

BULLIO SALIS, as much salt as is made at one *wealing*, or boiling; a twelve gallon measure of salt. *Mon. Ang.*, t. 2.

BULLION [some derive it from *βόλος*, a lump of earth, q. d. money having no stamp upon it; others from *βούλα*, a signature, because it is to receive the prince's effigies; and *Musevus* of *billon*, Fr. or Span., copper to make money of], uncoined gold and silver in the mass. Those metals are called so, either when smelted from the native ore, and not perfectly refined; or when they are perfectly refined, but melted down into bars or ingots, or into any unwrought body, of any degree of fineness.

BULTER, or **BOULTER**, the bran or refuse of meal after dressed; also the bag in which it is dressed, 51 *Hen. III.* Hence, *bulted* or *boulted* bread, being the coarsest bread.

BURDEN OF PROOF, [*onus probandi*]. The most prominent canon of evidence is, that the point in issue is to be proved by the party who asserts the affirmative, according to the civil law maxims, *ei incumbit probatio qui dicit, non qui negat*, and *affirmanti non neganti incumbit probatio*. The burthen of proof lies on the person who has to support

his case by proof of a fact which is peculiarly within his own knowledge, or of which he is supposed to be cognizant. "It is a well known principle of the law," remarks Archbishop Whately, (*Rhetoric*, pt. 1, chap. III., § 2,) "that every man (including a prisoner brought up for trial) is to be *presumed* innocent, till his guilt is established. This does not, of course, mean that we are to *take for granted* he is innocent; for if that were the case, he would be entitled to immediate liberation; nor does it mean that it is antecedently *more likely than not* that he is innocent; or that the majority of those brought to trial are so. (According to the most correct use of the term, a 'presumption' in favour of any supposition, means, not (as has been sometimes erroneously imagined) a preponderance of probability in its favour, but, such a *pre-occupation* of the ground, as implies that it must stand good, till some sufficient reason is adduced against it.) It evidently means only that the 'burden of proof' lies with the accusers;—that he is not to be called on to prove his innocence, or to be dealt with as a criminal till they have done so; but that they are to bring their charges against him, which if he can repel, he stands acquitted."

"Thus again, there is a 'presumption' in favour of the right of any individuals or bodies corporate to the property of which they are in *actual possession*; this does not mean that they are, or are not, *likely* to be the rightful owners, but merely that no man is to be disturbed in his possessions, till some claim against him shall be established. He is not to be called on to prove his right; but the claimant to disprove it; on whom, consequently, the 'burden of proof' lies."

BURGAGE-TENURE [*burgus*]. one of the three species of free socage holdings, and is where houses and lands, which were formerly the site of houses, in an ancient borough, are held of some lord by a certain rent. There are a great many customs affecting these tenures, the most remarkable of which is the custom of Borough English (*which see*). *Litt.* § 162. This tenure is obviously a fragment of Saxon freedom. As to the right of voting for members of Parliament in respect of these interests, see 2 *Wm. IV.*, c. 45.

BURGAGE-HOLDING, a tenure by which royal boroughs are held of the Sovereign. The service is watching and warding, and is done by the burgesses within the territory of the borough, whether expressed in the charter or not. *Scotch Dict.*

BURG, a small walled town or place of privilege.

BURGBOTE, a contribution towards the building or repairing of castles or walls of a borough or city. *Cowel.*

BURGESSES, generally the inhabitants of a borough or walled town; men of trade; sometimes restricted to the magistrates, &c., of corporate towns, and sometimes to the representatives of such borough in the Commons' House of Parliament.

BURGH-BRECHE [*fidejussionis violatio*, Lat., a breach of pledge], a fine imposed on the community of a town, for a breach of the peace, &c. *Leg. Canuti*, c. 55.

BURGH-ENGLISH, see **BOROUGH-ENGLISH**.

BURGHERISTHE, or **BURGHERICHE**, a breach of the peace in a city, &c. *Domesday*.

BURGH-MAILS, yearly payments to the Crown of Scotland, introduced by Malcolm III., and resembling the English fee-farm rents. *Encyc. Lond.*

BURGMOTE, a court of a borough. *Leg. Canuti*, c. 44.

BURGHWARE, a citizen or burgess.

BURGLARY [*burg*, Sax., a house, and *larron*, a thief, from *latro*, Lat.], called by our ancient law *hamesecken*. A breaking and entering by night into a mansion house, with intent to commit a felony. There are four things to be considered in this definition. 1. The *time*; it must be by night, and not by day, and night in the perpetration of this offence, is to be considered as commencing at nine in the evening, and concluding at six in the morning; 7 *Wm. IV.*, and 1 *Vict.*, c. 86. 2. The *place*; it must be a mansion-house, or dwelling-house, or some building connected therewith. The 13th § of 7 & 8 *Geo. IV.*, c. 29, enacts, "that no building, although within the same curtilage with the dwelling-house, and occupied therewith, shall be deemed to be part of such dwelling-house, for the purpose of burglary, or for any of the purposes aforesaid, unless there shall be a communication between such building and dwelling-house, either immediate or by means of a covered and inclosed passage leading from the one to the other." A house that has not been slept in by the owner, or any part of his family, is not his dwelling-house, so as to make the breaking into it burglary, although it has been used for meals and for business in general. 3. The *manner*; there must be both a breaking and an entry to complete it. But they need not be both done at once; for if a hole be broken one night, and the same breakers enter the next night through the same, they are burglars. Breaking or taking out the glass of, or otherwise opening a window, picking a lock, opening it with a key, lifting the latch of a door, or unloosing any fastening, coming down a chimney, are breakings within the authorities; as for the entry, any the least degree of it, with any part of the body, or with an instrument held in the hand, is sufficient; as to step over the threshold; to put a hand or a hook in at a window to draw out goods, or a pistol to demand one's money; introducing the hand between the glass of an outer window and inner shutter, are all of them burglarious entries. 4. The *intent* must be felonious, either at Common Law or by Statute, as robbery, murder, rape, or any other felony, whether actually perpetrated or not. By 7 *Wm. IV.* and 1 *Vict.* c. 86, the capital punishment (death) in cases of burglary is confined to those where there has been violence

to any person; in all other cases, it is transportation for life, or for ten years, or imprisonment. 4 *Bl. Com.* 223; *Russell on Crimes*; *Arch. Crim. Plead.*

BURI, husbandmen. *Mon. Ang.*, t. 3, p. 183.

BURIAL, the act of interring the dead. See BIRTH. The 4 Geo. IV., c. 52, abolished the barbarous mode of burying persons found *felo de se*, and directs, that their burial shall take place, without any marks of ignominy, privately in the parish church-yard, between the hours of nine and twelve at night, under the direction of the coroner. The burial of dead bodies cast on shore is enforced by 48 Geo. III., c. 75.

Burial in some part of the parish church-yard is a common law right, without even paying for breaking the soil, and that right will be enforced by *mandamus*, but not to inter the body of a parishioner in an iron coffin or vault, or even in any particular part of a churchyard, as the family vault for example, that being within the discretion of the incumbent. In order to acquire a perfect right to be buried in a particular vault or place, a faculty must be obtained from the ordinary, as in the case of a pew; or a man may prescribe that he is occupier of an ancient messuage in a parish, and ought to have separate burial in such a vault within the church, and such prescription implies that a faculty was originally obtained (8 B. & C. 293). The faculty, however, fails when the family cease to be parishioners.

A clergyman may be prosecuted in the Ecclesiastical Court for improperly refusing to bury a dissenter or other person, for by the 60th Canon "no minister shall refuse or delay to bury any corpse that is brought to the church or churchyard (convenient warning being given him before), in such manner and form as is prescribed in the Book of Common Prayer." (3 *Phil. Ec. Cas.* 264—306.) A conspiracy to prevent a burial is indictable at common law, and so is the wilfully obstructing a clergyman in reading the burial service over the dead in the parish church, and by threats and menaces hindering the burial. (7 *Dowl. & Ry.* 461.) A clergyman has, neither by the ecclesiastical law, nor by the common law, any right to black cloth or other ornaments placed round a pulpit upon the occasion of a burial, but the same belongs to the executors, or persons at whose expense they were placed there, and who might recover the value in an action of *trover*, if taken by the parson, or other person.

It is a vulgar error that a creditor can arrest or detain the body of a deceased debtor, and the doing such an act is indictable as a misdemeanour. See *Lord Ellenborough's remarks in Jones v. Ashburnham*, 4 *East*, 445. It is also a vulgar error that permitting a funeral procession to pass over private grounds creates a public right of way.

Funerals are exempt from tolls by 3 Geo. IV., c. 126, § 32. The 2 & 3 Wm. IV., c.

74, regulating schools of anatomy, is calculated to prevent the stealing of dead bodies, which is contrary to common decency, and abhorrent to the general sentiments and feelings of society. The 6 & 7 Wm. IV., c. 86, regulates the registry of deaths.

BURNETA, or BRUNETTA, cloth made of dyed wool. *Lyndewood*.

BURNING IN THE HAND. See BRANDING.

BURNING of houses, outhouses, &c. See ARSON. As to setting fire to churches, mills, ships, &c., see 1 *Vict.*, c. 89.

BURROCHIUM, a burroch, dam, or small wear over a river, where wheels are laid for the taking of fish. *Cowel*.

BURSA, a purse.

BURSAR [*bursarius*, Lat., whence *purse*, and *purser*, a ship's officer], a treasurer of a college.

BURSARIA, the exchequer of collegiate or conventual bodies; or the place of receiving, paying, and accounting by the bursars. Also stipendiary scholars, who live upon the burse, fund, or joint stock of the college.

BURSE [*cambium*, *basilica*], an exchange, or place of meeting of merchants.

BURSEHOLDERS. See HEADBOROUGH.

BUSONES COMITATUS, the barons of a county. *Blount*.

BUSSA, a ship. *Ibid*.

BUSSELLUS [*bouts*, old Fr., leather contents of wine], a bushel.

BUSTA, BUSTUS, BUSCA, and BUSCUS, &c. See BRUCIA and BRUSULA.

BUSTARD, a large bird of game, usually found on down and plains. 25 *Hen. VIII.*, c. 11.

BUTLER. See BOTILER.

BUTLERAGE, an ancient hereditary duty belonging to the Crown, much older than the customs, which was a right of taking two tons of wine from every ship importing into England twenty tons or more, which by King Edward 1st was exchanged into a duty of 2s. for every ton imported by merchant strangers, and called *butlerage*, because paid to the King's butler; it was also called *prisage*, because it was a *taking* or purveyance for wine to the King's use. 4 *Inst* 30; 1 *Bl. Com.* 314.

BUTHSCARLE, mariners or seamen. *Seld. Mare. claus.* 184.

BUTTICELLA, or BUTTICELLIN, a less measure.

BUTTS, the ends of short pieces of land in arable ridges and furrows. Also the place where archers meet with their bows and arrows to shoot at a mark.

BUYER, a purchaser; "the buyer wants a hundred eyes, the seller but one." *Chi compra hà bisogno di cent' occhii, chi vende n' hà assai di uno*. It. Or according to the Latins, *Caveat emptor*. Let the buyer look to himself. The seller knows the good or bad qualities of his commodities, and has more need of his tongue than his eyes: whereas the buyer cannot be too watchful in this deceiving age, in which tricking in trade

is but too much looked upon as warrantable cunning, and over-reaching passes for wit. *Encyc. Lond.*

BUYING OF PLEAS, See MAINTENANCE.

BUZA, BUTTA, or BUITIS, a standing measure.

BUZONIS, the shaft of an arrow before it is fledged and feathered.

BYE, and BEE [*by*, Sax.], habitation, as *bying*, i. e., a dwelling-house.

BY-LAWS [*bilagines*, from *by*, Sax., *pagus*, *civitas*, and *lagen*, *lex*, *Spelm.*, or perhaps laws made *obiter* by the *by*], the laws, regulations, and constitutions of corporations, for the government of their members, being private laws made *by the bye*, in particular cases, to which the public laws do not extend. They may be made at courts-leet and courts-baron, by commoners or inhabitants, in vills, &c., guilds or fraternities of trade duly incorporated. They are binding, unless contrary to law, or unreasonable, and against the common benefit, and then they are void. There are nice distinctions drawn between by-laws made in *restraint* of a trade, and those to *regulate* it. If a by-law do not mention how the penalty for disobedience of it is to be recovered, debt or *assumpsit* will lie, but if warranted by special custom, distress and sale of the party's goods may be made.

No trading company is allowed to make by-laws which may affect the Crown, or the common profit of the people, under penalty of 40*l.*, unless they be approved by the Chancellor, Treasurer, and Chief Justices, or the Judges of assize in their circuits. 19 *Hen. VII.*, c. 7.

By the Municipal Corporation Act (5 & 6 *Wm. IV.*, c. 76), the council have express power to make such by-laws as to them shall seem meet, for prevention and suppression of any nuisances not already made punishable in a summary manner, and to inflict a fine not exceeding 5*l.* These by-laws cannot be made unless two-thirds of the whole council are present, and cannot come into operation till twenty-eight days after the same have been sent to the Secretary of State for approval of her Majesty in council, who may disapprove of the same, and after public notification thereof has been made in the borough, by affixing the same in some public place.

In Scotland those laws are called laws of *birlaw*, or *burlaw*, which are made by neighbours elected by common consent in the birlaw courts, wherein knowledge is taken of complaints between neighbour and neighbour, which men so chosen are judges and arbitrators, and styled *birlaw-men*. And *birlaws*, according to Skene (p. 33), are *leges rusticorum*, laws made by husbandmen, &c., concerning neighbourhood.

BYSAX, the first month of the Bengal year, beginning the 11th of April, and ending the 11th of May.

C.

CABAL [*cabala*, Heb., tradition], a hidden or imaginary art practised by the Jews; also a junto or private meeting of small parties. This name was given to that iniquitous ministry in the reign of Charles II., formed by Clifford, Ashley, Buckingham, Arlington, and Lauderdale, who concerted a scheme for the restoration of popery. The initials of these five names form the word "cabal;" hence the appellation. *Hume* ix., ch. 66. A cabal differs from a party, as few to many.

CABALIST, a factor or broker in French commerce.

CABALLARIA [*caballus*, Lat., a mill horse], pertaining to a horse. It was a feudal tenure of lands, the tenant furnishing a horseman suitably equipped in time of war, or when the lord had occasion for his service.

CABINET COUNCIL, a private and confidential assembly of the most considerable ministers of state, to concert measures for the administration of public affairs; first established in England by Charles 1st.

CABLE [*cabl*, Welsh, *cabel*, Dut.], the great rope of a ship, to which the anchor is fastened. The regulations for manufacturing cables are settled by 25 *Geo. III.*, c. 56.

CABLISH [*cadere*, Lat., to fall], brushwood, or more properly windfall-wood, according to Sir Henry Spelman.

CACHEPOLUS, or CACHERELIUS, an inferior bailiff, or catchpole. *Jacob*. The modern *catchpoll* is undoubtedly derived from this word, but of its own etymon, nothing seems to be known with certainty.

CADE, a cask containing of herrings 500, but of sprats 1000. *Book of Rates*, fol. 45.

CADET, one who is trained up for the army by a course of military discipline, at Woolwich, Addiscombe, &c., previously to obtaining a commission in the East India Company's service. Also a younger brother. Cadet differs from volunteer, as the former takes pay, whereas the latter serves without pay. *Encyc. Lond.*

CAEPG-ILDUM, restoring cattle or goods.

CÆSARIAN OPERATION [from *Cæsar*, or rather *Cæso*, the first of that name, who was cut out of his mother's womb], that surgical operation, whereby the *fœtus*, which can neither make its way into the world by the ordinary and natural passage, nor be extracted by the attempts of art, whether the mother and *fœtus* be yet alive, or whether either of them be dead, is, by a cautious and well timed section, taken from the mother's belly, with a view to save the lives of both, or either of them. "By most men," observes Burn (*Principles of Midwifery*, p. 473, 1824), "the life of the mother has been considered of the greatest importance, and, therefore, as the Cæsar operation is full of danger to her, no British practitioner will perform it, when delivery can, by the destruction of the child, be procured *per vias naturales*. There are, I think, histories of twenty-three cases, where this operation has

been performed in Britain; out of these only one woman has been saved, but eleven children have been preserved. On the continent, however, where the operation is performed more frequently, and often in more favourable circumstances, the number of fatal cases is much less. If we confine our view to the success of the operation in this Island, we must consider it as universally fatal to the mother. The operation itself, though dangerous in its consequences and formidable in its appearance, is by no means difficult to perform. Some advise the incision to be made perpendicularly in the *linea alba*, others transversely, in the direction of the fibres of the *transversalis* muscle. Perhaps the precise situation and direction of the wound must be regulated by the circumstances of the case, and the shape of the abdomen; but in general, I apprehend that the transverse wound will be most eligible."

If this operation be performed after the mother's death, the husband cannot be tenant by the courtesy; since his right begins from the birth of the issue, and is consummated by the death of the wife; but if mother and child are successfully saved, then, I apprehend, the husband would be entitled after her death.

CAGIA, a cage or coop for birds. *Rot. Claus.*, 38 Hen. III.

CALANGIUM, and CALANGIA, a challenge, claim, or dispute. *Mon. Angl.*, tom. 2, fol. 252.

CALCETUM, and CALCEA [*calx*, Lat., *chaux*, Fr., chalk], a causey, or common hard-way, maintained and repaired with stones and rubbish. *Kennet's Gloss.*

CALEDONIA, that part of Scotland north of the Firths of Dunbritton and Edinburgh.

CALEFAGIUM, a right to take fuel yearly. *Blount.*

CALENDAR [*calendarium*, Lat.], the order and series of months, together with the festivals and fasts, which make up the year. There are two modes of computing time, by the annual course of the sun, and by the periodical revolutions of the moon. The solar year consists of 365 days, five hours, 48', 45", 30"; the lunar year of 354 days, three hours, 48', 38", 12". The Mahometans adopt the lunar year. The solar year, calculated by the ancient Egyptians, has undergone various corrections and denominations. The chief of these now in use are the three following: (1.) The Julian year, so called because Julius Cæsar introduced into the Roman empire the solar or Egyptian year, instead of the lunar year. The Russians and Greeks are the only nations that now use the Julian year. The common Julian year consists of 365 days, and the *bessextile*, which returns every four years, of 366 days. This computation is faulty, inasmuch as it allows 365 days, and six entire hours for the annual revolution of the sun, being an excess every year of 11', 14", 30", beyond the true time. This, in a course of ages, had amounted to several days, and began at length to derange the order of the seasons. Leo X. paid some

attention to this, but Gregory XIII. caused a new calendar to be drawn up, which is called the (2.) Gregorian year; and because the civil year had gained ten days, he ordered, by a bull published in 1581, that these days should be expunged, so that instead of the 5th of October, 1582, it should be reckoned the 15th. The catholic states adopted this new calendar, but the protestants and the rest of Europe adhered to the Julian, and hence the distinction between the old and new style, to which it is necessary to attend in all public acts and writings since 1582. The difference until 1699 was ten days, and eleven from 1700, twelve days must be reckoned during 1800, so that the 1st January of the old style, answers to the 13th of the new. (3.) The Reformed Calendar differs from the Gregorian, as to the method of calculating the time of Easter, and the other moveable feasts. The protestants of Germany, Holland, Denmark, and Switzerland, adopted this in 1700, Great Britain in 1752, Sweden in 1753, but since 1776, the protestants of Germany, Switzerland, and Holland, adopted the Gregorian. In England the year used to commence on the 25th of March until 1753, when by the 24 Geo. II., c. 23, the beginning of the year was transferred to the 1st of January, and the 3rd of September, 1752, was reckoned the 14th of the same month, in order to accommodate the English chronology to the new style. 25 Geo. II., c. 30; *Rymer's Fœdera*, vol. vi, p. 119; *Koch's Europe*, *Introd.*

CALENDAR MONTH, a period of time consisting of thirty days in April, June, September, and November; of thirty-one days in the remainder of the months, except February, which consists of twenty-eight days, except in leap year, when the intercalary day is added, making twenty-nine days.

CALENDAR OF PRISONERS, a list of all the prisoners' names in the custody of the sheriff of each county, prepared before the arrival of the Judges on their respective circuits. At the end of the assize, the clerk of assize makes out four written lists of all the prisoners, with separate columns, containing their crimes, verdicts, and sentences, leaving a blank column, which the Judge fills up opposite to the names of the prisoners by writing to be reprieved or respited or transported, &c. These four calendars are signed by the Judge and clerk of assize; then one is given to the sheriff, another to the gaoler, and the Judge and the clerk of assize each keep another. If the sheriff afterwards receive no special order from the Judge, he executes the judgment of the law in the usual manner, agreeably to the directions in his calendar. *Christian's note to Bl. Com.* IV., c. 32.

CALENDs [*καλέω*, Gk., to call], the first days of each month among the Romans. Romulus begun his months always upon the first day of the moon, and was followed in this by the authors of the other accounts, to avoid the altering of the immoveable feasts.

Therefore, every new moon, one of the inferior priests used to assemble the people in the Capitol and *call* over as many days as there are between that and the nones. But we must remember that this custom of calling the days, continued no longer than the year of the city 450, when C. Flavins, the *curule ædile* ordered the *fasti*, or calendar, to be set up in public places, that every body might know the difference of times and the return of the festivals. *Liv.*, l. 5, c. 46, &c. In the dates of deeds, the day of the month, by *nones*, *ides*, or *calends*, is sufficient. 2 *Inst.* 675.

CALKERS, magistrates who repair the breaches of order and safety in the State. *Ezek.* xxvii. 9, 27.

CALL OF THE HOUSE, an imperative summons sent to every member of the House of Commons, on some particular occasion. Members not attending when their names are called, are reported as defaulters, and ordered to attend on another day, when, if they still be absent, and no excuse offered, they may be committed to the custody of the Serjeant-at-Arms. *Lex Parl.*

CALLING THE PLAINTIFF. When a plaintiff or his counsel, seeing that sufficient evidence has not been given to maintain the issue, withdraws, the crier is ordered to call or demand the plaintiff, and if neither he nor any person for him, appears, he is non-suit, the jurors are discharged without giving a verdict, the action is at an end, and the defendant recovers his costs. Such judgment does not prevent him from bringing another action for the same cause, but a verdict would have barred him for ever. 3 *Bl. Com.* 376; *Step. Pl.* 120, 330.

CALLIS, the King's highway, according to old writers. *Hunt.* l. 1.

CALPES, a gift to the head of a clan, as an acknowledgment for protection and maintenance. *Scotch Law*.

CAMALODUNUM, Maldon, in Essex.

CAMBIST [*cambium*, Lat.], a person skilled in exchanges, who trades in promissory notes and bills of exchange. Technical among merchants and bankers.

CAMERA [*cam*, *cammer*, Ger., crooked], the Judge's chamber in Serjeant's Inn. *Ken. Glos.*

CAMERA-STELLATA, the Star Chamber. Its authority was enlarged and confirmed by *Rot. Parl.*, 3 *Hen. VII.*, n. 17, and abolished in the reign of Charles I., a little before the commencement of the civil wars. *Hume* iv, 96.

CAMERALISTICS, the science of finance or public revenue, comprehending the means of raising and disposing of it.

CAMISIA, a garment belonging to priests, called the *alb*. *Pet. Blesensis*.

CAMOCCA, a garment made of silk. *Mon. Angl.*, tom. 3, p. 81.

CAMPANA BAJULA, a small hand bell, used in the ceremonies of the Roman church, and retained among the protestants by sexton, parish clerks, and criers. *Camb. ap. Wharton Angl. Sacr.*, par. 2, p. 637.

CAMPARTUM, a part or portion of a larger field or ground, which would otherwise be in gross or common. *Prinne His. Col.*, vol. 3, p. 89.

CAMPERTUM, a corn field. *Pet. in Parl.*, 30 *Ed. I.*

CAMPFIGHT [*duellum*, Lat., *combat*, Fr.], the trial of a cause by duel or combat of two champions in the field, for decision of some controversy. If it were a crime deserving death, the camp-fight was for life or death; if the offence deserved only imprisonment, the camp-fight was accomplished, when one combatant had subdued the other, so as either to make him yield, or take him prisoner. The accused might choose another to fight in his stead, but the accuser was obliged to perform it in his own person, and with equality of weapons. 3 *Inst.* 221; *Verstegan's Rest. of decayed Intell.* 64.

CAMPUS MALL, an anniversary assembly of our ancestors, held on May-day, when they confederated for the defence of the kingdom against all its enemies. *Leges Edw. Conf.* c. 35.

CAN, clearance, averment. *Anc. Inst. Eng.*

CANCELLARIA CURIA, the ancient denomination of the Court of Chancery.

Cancellarii Angliæ dignitas est, ut secundus à rege in regno habeatur. 4 *Inst.* 78.—(The dignity of the Chancellor of England is, that he is deemed the second from the Sovereign in the kingdom.)

CANCELLATION, according to Bartolus, an expunging or wiping out of the contents of an instrument by two lines drawn in the manner of a cross.

CANCELLI (lattice work,) the rails or balusters inclosing the bar of a Court of justice or the communion table.

CANDIDATE [*candidatus*, Lat., clothed in white], a competitor, one who solicits or proposes himself for a place or office. The name is borrowed from the *Toga Candida*, in which competitors at Rome were habited. *Vide Plutarch in Coriolan.*

CANDLEMAS DAY, a festival appointed by the church to be observed on the second day of February in every year, in honour of the purification of the Virgin Mary, being forty days after her miraculous delivery. At which festival, formerly, the protestants, and still the papists, go in procession, with many lighted candles; they also consecrate candles on this day for the service of the ensuing year.

CANES OPERTIÆ, dogs with whole feet not lamed.

CANESTELLUS, a basket.

CANFARA, a trial by hot iron.

CANIPULUS, a short sword. *Blount*.

CANA, a rod or distance in the measure of ground.

CANON [*κανών*, Gk., a rule], a law or ordinance of the church. The canon law consists partly of certain rules taken out of the scripture; partly of the writings of the ancient fathers of the church; partly of the ordinances of the general and provincial councils; and

partly of the decrees of the Popes in former ages; it is contained in two principal parts, the decrees and the decretals. The canon law, says Dr. Burn, (1 *Eccl. Law, Pref. xviii.*) is founded principally upon the civil law, and so interwoven with it in many branches thereof, that there is no understanding the canon law rightly, without being very well versed in the civil law; wherefore the knowledge thereof is absolutely necessary for the dispatch of all causes of ecclesiastical cognizance. And the civil law not only serves to explain the canon law, but by the practice of all ecclesiastical courts is allowed to come in aid of and to support the canon law, in cases which are there omitted. The canon law sprung from the ruins of the Roman empire, and from the power of the Roman pontiffs, whence the ecclesiastical laws of this country have been for the most part derived.

The pontifical law promulgated by successive Popes, and diffused throughout Europe, extended to all persons and things belonging to the Roman church, and separate from the laity; to all things relating to pious uses; to the guardianship of orphans; the wills of defuncts, and matters of marriage and divorce, all which were exempted from the civil authority of the Sovereigns, who were devoted to the see of Rome. So deeply has this law been rooted, that even where the Pope's authority has been rejected, yet consideration has been had to these laws, not only as those by which church benefices have been erected and ordered, but as likewise containing many equitable and profitable laws, which because of their weighty matter, and their being received, may more fitly be retained than rejected. *Inst. Laws of Scot. l. 1, t. 1, § 7.* "The canon law prevails in this country," (observed Lord Thurlow, in *Scott v. Tyler*, 2 *Dick.* 716), "only so far as it hath been actually received, with such amplifications and limitations as time and occasion have introduced; and subject at all times to the municipal law. It is founded in the civil law; consequently the tenets of that law also may serve to illustrate the received rules of the canon law."

CANON RELIGIOSORUM, a book wherein the religious of convents had a fair transcript of the rules of their order, which were frequently held among them as their local statutes; and this book was therefore called *Regula* and *Canon*. These public books were the four following:—1. *Missale*, containing all the offices of devotion. 2. *Martyrologium*, a register of their saints and martyrs, with the place and time of passion. 3. *Canon*, or *Regula*, the institution and rules of their order. 4. *Necrologium*, or *Obituarium*, in which they entered the deaths of their founders and benefactors, to observe the days of commemoration of them. *Ken. Groff.*

CANONICAL, agreeable to the canons of the church

CANONS of the Protestant Church, ordinances enacted by the clergy under James I., in

1603, but never confirmed in Parliament. It has been solemnly adjudged upon the principles of law and the constitution, that, where they are not merely declaratory of the ancient canon law, but are introductory of new regulations, they do not bind the laity, whatever regard the clergy may think proper to pay them. 1 *Bl. Com.* 83.

CANONS OF INHERITANCE, the rules directing the descent of real property throughout the lineal and collateral consanguinity of the ancestor, or, as he is technically called, the purchaser. The 3 & 4 *Wm. IV.*, c. 106, materially altered the old canons of real property descent, but because the act does not extend to any descent which took place on the death of any persons who died before the 1st January, 1834, it is deemed expedient to give both the old and the new canons:—

The old canons, which obtain in cases of ancestors dying before 1st January, 1834, are the following:—

(1) That inheritances shall lineally descend to the issue of the person who last died actually seised, *in infinitum*, but shall never lineally ascend.

(2) That the male issue shall be admitted before the female.

(3) That where there are two or more males in equal degree, the eldest only shall inherit; but the females all together.

(4) That the lineal descendants, *in infinitum*, of any person deceased, shall represent their ancestor; that is, shall stand in the same place as the person himself would have done had he been living.

(5) That on failure of lineal descendants, or issue of the person last seised, the inheritance shall descend to his collateral relations, being of the blood of the first purchaser, subject to the three preceding rules.

(6) That the collateral heir of the person last seised must be his next collateral kinsman of the whole blood.

(7) That in collateral inheritances the male stocks shall be preferred to the female, (that is, kindred derived from the blood of the male ancestors, however remote, shall be admitted before those from the blood of the females, however near), unless, where the lands have in fact descended from a female.

The canons according to the new law grafted upon the old, are the following:—

(1) That inheritances shall lineally descend to the issue of the person who last died entitled, *in infinitum*.

(2) That the male issue shall be admitted before the female.

(3) That where there are two or more males in equal degree, the eldest only shall inherit; but the females all together.

(4) That the lineal descendants, *in infinitum*, of any person deceased, shall represent their ancestor; that is, shall stand in the same place as the person himself would have done had he been living.

(5) That on failure of lineal descendants, or issue of the person last entitled, the in-

heritance shall ascend and descend to the lineal ancestors, and to the collateral relations of the purchaser.

(6) That the nearest lineal ancestor shall be the heir of the purchaser, in preference to any of the descendants of such lineal ancestor, and to more remote lineal ancestors and their descendants, (other than himself); and the descendants of every such lineal ancestor shall succeed next after or in default of him, so that the father shall be preferred to a brother or sister, and a more remote lineal ancestor to any of his issue, other than a nearer lineal ancestor or his issue; and subject to this rule and to the next, the descent to collaterals shall be subject to the second, third, and fourth canons.

(7) That as between collaterals of a purchaser, a relation of the half blood shall succeed next after any relation in the same degree of the whole blood and his issue, where the common ancestor shall be a male, and next after the common ancestor, where such common ancestor shall be a female. So that the brother of the half-blood, on the part of the father, shall inherit next after the sisters of the whole blood on the part of the father and their issue; and the brother of the half blood on the part of the mother, shall inherit next after the mother. The collaterals of the half blood of a person last entitled, who was not a purchaser, will take in a course of descent from the purchaser of whose whole blood they are, by force of the direction, that in every case the descent shall be traced from the purchaser.

(8) That in lineal ascending, and in collateral inheritances, the male stocks shall be preferred to the female, (that is, the male ancestors and kindred derived from their blood, however remote, shall be admitted before female ancestors and kindred derived from their blood, however near,) unless where the lands have in fact descended from a female. Therefore, under the new law, none of the maternal ancestors of the person from whom the descent is to be traced (viz., the purchaser,) nor any of their descendants are capable of inheriting until all his paternal ancestors and their descendants shall have failed; and also no female paternal ancestor of such person, nor any of her descendants, is, or are capable of inheriting until all his male paternal ancestors and their descendants shall have failed; and no female maternal ancestor of such person, nor any of her descendants, is or are capable of inheriting until all his male maternal ancestors and their descendants have failed. *Sug. V. & P., vol. 2, p. 238.*

CANTEL, a lump, or that which is added above measure; also a piece of anything, as a "candel of bread," or the like. *Blount.*

CANTERBURY, *Archbishop of*, his customary privilege is to crown the Kings and Queens of England, while the Archbishop of York has the privilege to crown the Queen Consort, and be her perpetual chaplain. The Archbishop of Canterbury has also, by 25

Hen. VIII., c. 21, the power of granting dispensations in any case not contrary to the Holy Scriptures and the law of God, where the Pope used formerly to grant them, which is the foundation of his granting special licences to marry at any place or time; to hold two livings, (which must be confirmed under the Great Seal,) and the like; and on this also is founded the right he exercises of conferring degrees in prejudice of the two universities; but although he can confer all the degrees which are taken in the Universities, yet the graduates of the two Universities, by various acts of Parliament, and other regulations, are entitled to many privileges, which are not extended to what is called a *Lambeth degree*. 1 *Bl. Com.* 183; 1 *Burn's Ec. L.* 178.

CANTRED, or KANTRESS [*cant*, or *cantre*, Brit., a hundred, and *tret*, a town or village], an hundred Welch villages. *Mon. Ang. p. 1, f. 319.*

CAP OF MAINTENANCE, one of the regalia or ornaments of State, belonging to the Sovereigns of England, before whom it was carried at the coronation and other great solemnities. Caps of maintenance are also carried before the mayors of several cities in England. *Encyc. Lond.*

CAPACITY, an ability or fitness to do or to receive, to sue or be sued. All persons are capable of purchasing; and all that are in possession, or potential possession of any estates, are capable of conveying them, unless under peculiar legal disabilities, as being attainted, *non compotes*, infants (except by custom), under duress, *seine coverts* (except *sub modo*), and aliens. All persons are capable of committing crimes, unless there be in them a defect of will: for, to constitute a legal crime, there must be both a vicious will and a vicious act. The will does not concur with the act: 1. Where there is a defect of understanding. 2. Where no will is exerted. 3. Where the act is constrained by force and violence. A vicious will may, therefore, be wanting in the cases of—(a) infancy; (b) idiocy, or lunacy; (c) drunkenness, which does not, however, excuse; (d) misfortune; (e) ignorance, or mistake of fact; (f) compulsion, or necessity—which is 1st, that of civil subjection; 2dly, that of duress *per minas*; 3dly, that of choosing the least pernicious of two evils, where one is unavoidable; 4thly, that of want or hunger, which is no legitimate excuse, although this is a vexed point amongst jurists. The Queen, from her excellence and dignity, is also incapable of doing wrong. *Bl. Anal.*

All laws which have for their principal object the regulation of the capacity, state, and condition of persons, have been treated by foreign jurists generally as personal laws. They are by them divided into two sorts: those which are universal, and those which are special. The former (universal laws) regulate universally the capacity, state, and condition of persons, such as their minority,

majority, emancipation, and power of administration of their own affairs. The latter (special laws) create an ability or disability to do certain acts, leaving the party in all other respects with his general capacity or incapacity. Consult *Story's Conflict of Laws*, c. iv, tit. "Capacity of Persons."

CAPE, a judicial writ touching plea of lands or tenements, divided into *cape magnum*, or the *grand cape*, which lay before appearance to summon the tenant to answer the default, and also over to the demandant; the *cape ad valentiam* was a species of grand cape, and *cape parvum*, or petit cape, after appearance or view granted, summoning the tenant to answer the default only. All abolished. *Termes de Ley*.

CAPELLA, an oratory, or depending place of divine worship; also a chest, cabinet, or other depository of precious things, especially of religious relics. *Ken. Paroch. Antiq.* 580.

CAPELLUS, a cap, bonnet, helmet, or other covering for the head.

CAPIAS (that you take). The writ of *capias*, as a means of commencing an action at common law, is altogether abolished, and a new writ, called a "capias on mesne process," or "a bailable process," was introduced by 1 & 2 Vict., c. 110, § 3, which is addressed to the sheriff, and is in force one calendar month; an order for issuing which, and arresting and holding the defendant to bail under it, may be obtained at any time after the commencement of the action and before final judgment, in all cases in which, the defendant was previously liable to arrest (whether with or without a Judge's order) on satisfying a Judge at chambers, by affidavit, that the cause of action amounts to 20*l.* or upwards, and that the debtor is about to quit England, unless forthwith apprehended. *Chit. Arch. Prac.* 461.

CAPIAS AD AUDIENDUM JUDICIUM (that you take to hear judgment). This writ is awarded and issued, in case the defendant be found guilty of a misdemeanor (the trial of which may, and does usually, happen in his absence, after he has once appeared), to bring him up to the court to receive sentence, and, if he abscond, he may be prosecuted even to outlawry. 4 *Bl. Com.* 375.

CAPIAS PRO FINE, or **MISERICORDIA** (that you take for the fine or in mercy). If the verdict be for the defendant, the plaintiff is adjudged to be amerced (nominally) for his false claim; but if the verdict be for the plaintiff, then in all actions *vi et armis*, or where the defendant in his pleading has falsely denied his own deed, the judgment contained an award of a *capiatur pro fine*; in all other cases, the defendant is adjudged to be amerced. In actions of trespass and ejectment a *capias pro fine* used to issue in pursuance of the *capiatur*, and the defendant was obliged to compound the fine, by paying some small sum to the master, until by 5 W. & M., c. 12, it was enacted that no *capias pro fine* should thereafter issue in actions of

"trespass, ejectment, assault, or false imprisonment" brought in any of the courts of Westminster; but that the plaintiff should pay 6*s.* 8*d.* to the master in satisfaction of the said fine, at the time of signing the judgment, and should be allowed the same in his costs.

CAPIAS AD RESPONDENDUM (that you take to answer). A process issued in cases of injury accompanied with force, or otherwise, against the defendant's person, when he neglected to appear upon the former process of attachment, or had no substance whereby to be attached, subjecting his person to imprisonment. 3 *Bl. Com.* 281.

CAPIAS AD SATISFACIENDUM (that you take to satisfy); called in practice a *ca. sa.* An execution writ of the highest nature, inasmuch as it deprives a person of liberty, till the satisfaction awarded be made; and therefore, when a man is once taken in execution upon this writ, no other process can be sued out against his lands and goods, unless he escape: and by 21 *James I.*, c. 24, if the defendant die while charged in execution upon this writ, the plaintiff may after his death sue out a new execution against his lands, goods, or chattels. This writ is addressed to the sheriff, commanding him to take the body of the defendant, and have him at Westminster on a day therein named, or immediately after the execution of the writ, to make the plaintiff satisfaction for his demand, or remain in custody till he does. This writ may be sued out, as may all other executory processes, for costs, against a plaintiff as well as a defendant, when judgment is had against him.

Bail may be taken in execution upon a *ca. sa.*, although they could not be holden to bail. So an infant and a *feme covert* may be taken on this writ, and if it be sued out against husband and wife, the wife may be taken on it, and she will not be discharged, unless she have no separate property, the general rule being that the wife shall be discharged, if in custody, *before* execution, but not after it. 2 *Bl. Com.* 315; *Chit. Arch. Prac.* 335.

CAPIAS UTLAGATUM (that you take the outlaw). This writ is either general, against the person only; or special, against the person, lands, and goods. If a defendant be outlawed, and appear publicly afterwards, he may be arrested by virtue of this writ, and committed till the outlawry be reversed; but any person may arrest an outlaw on a criminal prosecution, either by his own head, or by this writ, in order to bring him to execution. *Chit. Arch. Prac.* 931.

CAPIAS IN WITHERNAM (that you take reprisals). If the goods before an action of replevin have been eloigned, so that the sheriff cannot replevy them, then, upon plaint being levied in the county court by the plaintiff, the sheriff may issue this writ, *in vetito* (or, more properly, *repetito*), *namio*, signifying a second or reciprocal distress in lieu of the first which was eloigned; in other

words, the officer is commanded to take goods or cattle of the defendant, to the value of those taken by him, and deliver them to the plaintiff, who gives a bond with sureties, conditioned to prosecute his suit and to return the goods, &c., so to be delivered to him, if a return of them should be afterwards adjudged. Goods taken in *withernam* cannot be replevied till the original distress is forthcoming.

Also, after verdict and judgment for defendant in replevin, and the usual writ of execution *de retorno habendo* have been sued out, to which the sheriff returns that the goods, &c., are eloigned, i.e., conveyed to places unknown to him, so that he cannot execute the writ, the defendant may then sue out a *capias in withernam*, requiring the sheriff to take other goods, &c., of the plaintiff to the value of the goods, &c., eloigned, and deliver them to the defendant, to be kept by him until the plaintiff deliver to him the goods, &c., originally replevied. 3 *Bl. Com.* 148.

CAPIATUR, judgment quod. See **CAPIAS pro fine**, or *miserecordia*.

CAPITA (rights). Distribution of personalty *per capita* (professedly borrowed from the civilians, and enacted in the Statutes of Distributions) happens when all the claimants claim in their own right, in equal degree of kindred, and not *jure representationis*, in the right of another person, as if the next of kin be the intestate's three children, A., B., and C.; here the intestate's personalty is divided into three equal portions, and distributed *per capita*, one to each. So succession *per capita* is where the claimants are next in degree to the ancestor, in their own right, and not by right of representation. 2 *Bl. Com.* 218, 517.

CAPITAL, in political economy, that portion of the produce of industry existing in a country, which may be made directly available, either for the support of human existence, or the facilitating of production; but, in commerce, and as applied to individuals, it is understood to mean the sum of money which a merchant, banker, or trader, adventures in any undertaking, or which he contributes to the common stock of a partnership. Also the fund of a trading company or corporation, in which sense the word *stock* is generally added to it. *McCulloch's Comm. Dict.*

CAPITAL FELONIES, those crimes, upon conviction of which, the offender is condemned to be hanged. The crimes now punishable with death are, 1. high treason; 2. murders; 3. unnatural offences; 4. setting fire to any of the Queen's ships or stores; 5. causing injury to life, with intent to murder; 6. burglary, accompanied with an attempt to murder; 7. robbery, accompanied with stabbing or wounding; 8. setting fire to a dwelling-house, any person being therein; 9. setting fire to, casting away, or otherwise destroying ships, with intent to murder any person; 10. exhibiting false lights, with in-

tent to bring ships into danger; and, 11. piracy, accompanied with stabbing, &c. 4 & 5 *Vict.*, c. 56; 4 *Step. Com.* 480.

CAPITALE, a thing which is stolen, or the value of it. *Blount*.

CAPITALE VIVENS, live cattle. *Ibid.*

CAPITATION, a tax or imposition raised on each person in consideration of his labour, industry, office, rank, &c. It is a very ancient kind of tribute, and answers to what the Latins called *tributum*, by which taxes on persons are distinguished from taxes on merchandize, called *vectigalia*.

CAPITE, TENURE IN, lands held by tenants immediately from the king. It was the most honourable tenure, and was of two kinds, either *ut de honore*, where the land was held of the king, as proprietor of some honour, castle, or manor, or *ut de coronâ*, where it was held in right of the Crown itself. When these tenants in *capite* granted portions of their lands to inferior persons, they were called *mesne* (middle) lords or barons; with regard to such inferior tenants, who were styled tenants *paravail*, the lowest tenants, because they were supposed to make avail or profit of the lands. This tenure is now abolished, so that tenures hereafter created by the Crown are in common socage. 12 *Car. II.*, c. 24.

CAPITILITIUM, poll-money.

CAPITITIUM, a covering for the head. 1 *Hen. IV.*

CAPITULI AGRI, head-lands; lands lying at the head or upper end of furrows, &c. *Ken. Par. Ant.* 137.

CAPITULA RURALIA, assemblies, or chapters, held by rural deans and parochial clergy, within the precinct of every deanery; which at first were every three weeks, afterwards once a month, and subsequently once a quarter. *Cowel*.

Capitulum est clericorum congregatio sub uno decano in ecclesiâ cathedrali. Co. Lit. 96.— (A chapter is a congregation of clergy under one dean in a cathedral church.)

CAPTAIN, a leader or commander of a company of soldiers; who is either a general, governing an whole army, or special, as leader of a band or regiment. Also the commander of a ship or vessel.

CAPTION, that part of a legal instrument; as a commission, indictment, &c., which shows where, when, and by what authority it is taken, found, or executed. Thus, where a commission is executed, the commissioners subscribe their names to a certificate, declaring when and where the commission was executed. The caption is no part of an indictment, it is merely the style of the court where the indictment was preferred, which is prefixed as a kind of preamble to it upon the record, when made up, or when it is returned to a *certiorari*. *Arch. Crim. Plead.*, tit. *caption*. This word is improperly used for an arrest.

CAPTIVES, prisoners. As in the goods of an enemy, so also in his person, a sort of qualified property may be acquired, by taking him

prisoner of war, at least till his ransom be paid. 2 *Bl. Com.* 402.

CAPTURE, the taking of a prey; arrest, seizure; particularly prizes taken by privateers, in time of war.

CAPUTAGIUM, head or poll-money. See **CHEOAGIUM**.

CAPUT ANNI, the first day of the year.

CAPUT BARONIÆ, the castle or chief-seat of a baron.

CAPUT JEJUNII, the beginning of the Lent Fast, i. e., Ash Wednesday.

CAPUT LOCI, the head or upper part of a place.

CAPUT LUPINUM, a wolf's head. An outlawed felon was said to have *caput lupinum*, and might be knocked on the head, like a wolf, by any one that should meet him, because having renounced all law, he was to be dealt with as in a state of nature, when everyone that should find him might slay him; yet, now, to avoid such inhumanity, it is holden that no man is entitled to kill another wantonly or wilfully, but in doing so is guilty of murder, unless it happen in the endeavour to apprehend him. 4 *Bl. Com.* 320.

CAR, and **CHAR** [*caer*, Brit., city], names of places beginning with these words signify a city, as Carlisle, Cardiff, &c.

CARCAN, a pillory.

CARCANNUM, a prison. *Leg. Canut. Reg.*

CARCATUS, loaded, a ship freighted.

Carcer ad homines custodiendos, non ad puniendos, dari debet. Co. Lit. 260.—(A prison should be assigned to the custody, not the punishment of persons.)

CARECTA, and **CARECTATA**, a cart, and cart load.

CARETARIUS, or **CARECTARIUS**, a carter. *Blount.*

CARGO [*charge*, Fr.], the lading of a ship, the merchandise or wares contained and conveyed in a ship.

CARISTIA, dearth, scarcity, dearness. *Cowel.*

CARITAS, or **KARITE**, a grace cup, an extraordinary allowance of wine or liquor.

CARK, a quantity of wool, whereof thirty make a sarplar. 27 *Hen. VI.*, c. 2.

CARLE, see **KARLE**.

CARNO, an immunity or privilege. *Cowel.*

CARPEMEALS, a coarse cloth. 7 *Jac. I.*, c. 16.

CARRETA, a carriage, cart, or wain-load.

CARRELS, closets, or apartments for privacy or retirement.

CARRICLE, or **CARRACLE**, a ship of great burden.

CARRIER, in its general sense, a person who undertakes to transport the goods of other persons from one place to another for hire. It is not, however, every person who undertakes to carry goods for hire that is deemed a common carrier.

A private person may contract with another for the carriage of his goods, and incur no responsibility beyond that of any ordinary bailee for hire, that is to say, the responsibility of ordinary diligence. To bring a person within the description of a common

carrier, he must exercise it as a public employment; he must undertake to carry goods for persons generally; and he must hold himself out as ready to engage in the transportation of goods for hire, as a business, not as a casual occupation, *pro hac vice*. A common carrier has, therefore, been defined to be one who undertakes for hire or reward to transport the goods of such as choose to employ him, from place to place. Although the expression used is a common carrier of goods, yet this language is not to be understood in a strict sense; for a common carrier may be of money as well as of goods, and he will be bound, as such, for the carriage of money as well as of goods, if such is his own practice, or the common usage of the business in which he is engaged.

Common carriers are generally of two descriptions: 1, carriers by land; 2, carriers by water. Of the former description are the proprietors of stage-waggon and stage-coaches, and railroad cars, which ply between different places, and carry goods for hire. So are truckmen, waggoners, teamsters, cartmen, and porters, who undertake to carry goods for hire, as a common employment, from one town to another, or from one part of a town or city to another. Of the latter description are the owners and masters of ships, whether they are regular packet ships, or carrying smacks, or coasting ships, or other ships carrying on general freight. So are the owners and masters of steam boats engaged in the transportation of goods for persons generally, for hire. So are the lightermen, hoymen, barge owners, ferrymen, and boatmen, and others employed in the same manner. The owners of a steam-boat, who undertake to tow freight boats for hire, or undertake to tow vessels in or out of port for hire, are not common carriers, but are responsible only for ordinary skill, care, and diligence in their undertaking. *Story on the Law of Bailments*, 500.

The law regulating and limiting the common law liability of carriers, is fixed by the 11 Geo. IV., and 1 Wm. IV., c. 68, which protects carriers from liability in case of the loss of certain specified articles, exceeding the value of ten pounds, (excepting loss by the felony of the carrier's servants or his own personal default,) unless the party delivering the goods declare the value, and offer to pay, if required, an extra charge for carriage, but requires that the notice of the increased charges that may be required shall be affixed in the office, and of which, when so affixed, every person is bound to take notice; but it provides that the act shall not affect special contracts. It then declares that all other notices, then already or thereafter to be given, shall not protect a carrier from liability, excepting when so given under terms of the act, viz., when certain specified articles exceed the value of 10*l.*, and when such notice has been duly affixed; but as to any other goods, or even the specified articles, when under the value of 10*l.*, carriers cannot

by any notice protect themselves from the ancient common law liability. The act, however, allows effect to any express special contract made with a carrier, and according to the terms of that contract. The statute then authorizes an action for loss against any one proprietor, and excludes a plea in abatement of non-joinder, and provides that if loss ensue, then not only the declared value, but also the money paid for extra insurance, shall be recoverable; but entitles the carrier to require proof of the value of the package lost, and authorizes him to pay money into court.

The articles specified in the act are the following, viz.:—bills of exchange, china, clocks, coin (gold or silver) of this or any other State, engravings, fur, glass, gold coin or gold manufactured or otherwise, jewellery, lace, maps, notes of any bank, or for payment of money, orders for payment of money, paintings, pictures, plate (gold or silver), plated articles, precious stones, promissory notes, securities for payment of money, silks manufactured or unmanufactured or wrought up or not with other articles, silver, stamps, English or foreign, time-pieces of every description, title-deeds, trinkets, watches, writings.

Since this act, carriers requiring an increased charge, usually affix in their offices, and circulate, cards giving notice. It is settled by prior decisions, that no action can be supported against the postmaster-general for the loss of bills or bank notes, stolen out of letters put into the Post Office, and, therefore, it is a proper precaution to remit such documents in halves by different conveyances. *Jeremy on the Law of Carriers; Chitty's Commercial Law, v. iii. 369—386; Burn's Justice, tit. Carriers.*

CART-BOTE, see BOTE.

CARTE BLANCHE, a white card, or free permission, signed at the bottom with a person's name, and sometimes sealed, giving another person power to superscribe what conditions he pleases. Applied generally in the sense of unlimited terms being granted.

CARTEL, see CHARTEL.

CARTEL-SHIP, a vessel commissioned in the time of war to exchange the prisoners of any two hostile powers; also to carry any particular proposal from one to another; for this reason, the officer who commands her is particularly ordered to carry no cargo, ammunition, or implements of war, except a single gun for the purpose of signals. *Encyc. Lond.*

CARTULARY [*charta*, Lat., paper], a place where papers or records are kept.

CARUCA [*can*, old Gallic], a plough.

CARUCAGE, a tax imposed on every plough for the public service.

CARUCATE, CARVAGE, or CARVE OF LAND, a plough-land of 100 acres, or, according to Skene, as much land as may be tilled in a year and a day by one plough. *Ken. Glos.*

CARUCATARIUS, he that held lands in

carriage, or plough tenure. *Paroch. Antiq* 354.

CASE, ACTION ON, resorted to where a party sues for damages, for any wrong or cause of complaint to which covenant or trespass will not apply. This action originates in the power given by the Statute of Westminster 2, to the clerks of the Chancery, to frame new writs in *consimili casu*, upon the analogy of writs already known. Under this power they constructed many writs for different injuries, which were considered as in *consimili casu* with, that is, to bear a certain analogy to a trespass. The new writs invented for the cases supposed to bear such analogy, received, accordingly, the appellation of writs of *trespass on the case*, (*brevia "de transgressionem super casum,"*) as being founded on the particular circumstances of the case, thus requiring a remedy; and to distinguish them from the old writ of *trespass*, and the injuries themselves, which are the subjects of such writs, were not called *trespasses*, but had the general name of *torts*, *wrongs*, or *grievances*. The writs of trespass on the case, though invented thus, *pro re nata*, in various forms, according to the nature of the different wrongs which respectively called them forth, began, nevertheless to be deemed as constituting, collectively, a new individual form of action; and this new genus took its place by the name of *trespass on the case*, among the more ancient actions of debt, covenant, trespass, &c. Such being the nature of this action, it comprises, of course, many different species. There are two, however, of more frequent use than any other species of trespass on the case, viz., *assumpsit* and *trover*. The difference between an action of *trespass* and an action on the case is, that in the former the plaintiff complains of an immediate wrong, and in the latter, of a wrong that is the consequence of another act. The action of case is equally applicable to consequential injuries to the real and personal property, or to the personal character of the party by whom it is brought. *Step. Plead. 17.*

CASH [*caisse*, Fr., a chest], money, properly ready money, bills, drafts, bonds, and all immediately negotiable paper in a person's possession.

CASHLITE, a mulct.

CASSATION, a making null or void of any unjust or illegal act or decision.

CASHIER, a person entrusted with the monetary interests of a public company, usually under the order of directors.

CASSATUM, and CASSATA, a house, with land sufficient to maintain one family.

CASSETUR BREVE, (that the writ be quashed). When the defendant pleads sufficient matter in abatement, and the plaintiff cannot deny it, he may either obtain leave to amend his declaration, if that will answer his purpose, and which will be granted upon payment of costs, or he may at once enter on the roll a *cassatur breve*, or judgment upon his prayer that his writ may be quashed,

to the intent that he may sue out a better. In practice, judgment is not often signed, nor any entry made on record, but the prayer and award are copied on paper, and delivered, in the same manner as a pleading, to the opposite party. No costs are payable either way.

CASSIDILE, a little sack, purse, or pocket.

CASSOCK, or **CASSULA**, a garment belonging to a priest.

CASTEL, or **CASTLE**, a fortress in a town; a principal mansion of a nobleman. 2 *Inst.* 31.

CASTELLAIN, the lord, owner, or captain of a castle; the constable of a fortified house; a person having the custody of one of the Crown mansions; an officer of the forest. *Bract. Manw.*

CASTELLARIUM, the precinct or jurisdiction of a castle.

CASTELLARUM OPERATIO, castle work, or service and labour done by inferior tenants, for the building and upholding of castles of defence; towards which some gave their personal assistance, and others paid their contributions. See **TRINODA NECESSITAS**. *Castleward* was the service of guarding or watching at such castle.

CASTIGATORY, a certain engine of correction, otherwise called the tre-bucket, *tumbrel*, *tymborella*, cucking-stool, scolding-stool, ducking-stool, *goginstole*, and *cokestole*, corrupted from choking-stool. It was a punishment provided for scolding women, wherein they were plunged or soused over head in the water.

It was also called *Cathedra Stercoralis*, and by the Saxons, *scealfig stole*, and anciently indicted on brewers and bakers transgressing the laws, who were ducked in *stercore*, in stinking water. *Domesday Book*.

CASTING VOTE, the determinable opinion given by the chairman or president of a deliberate assembly, when the suffrages of the meeting are equal. Thus, in the House of Commons the Speaker declares the numbers after a division, but is not required to record his own vote unless the numbers are even, and then he must vote one way or the other, in order that the House may come to some decision upon the question which has been put from the chair. It is a difficult and delicate office to give an opinion under such circumstances, especially when it is the duty of the Speaker to withdraw himself as much as possible from the contentions of parties; and, therefore, when the question relates to the stage of a bill—as for the second reading, for instance—it is usual for him to vote for the “*ayes*,” in order to give the House an opportunity of re-considering the bill upon a future stage. In committees, some misconception appears to have existed as to the precise nature of the chairman’s right of voting. In 1836 the House of Commons was informed that the chairman of a select committee had first claimed the privilege to vote as a member of the committee, and afterwards, when the voices were equal, of

giving a casting vote as chairman, and that such practice had of late years prevailed in some select committees; when it was declared by the House that, according to the established rules of Parliament, the chairman of a select committee can only vote when there is an equality of voices (91 *Commons’ Jour.* 214). This error was very probably occasioned by the practice of election committees, which was, however, confined to them, and only existed under the provisions of Acts of Parliament.

CASTER, AND CHESTER [*castrum*, Lat.], the places ending with either of these words, were the sites of the castles built by the Romans.

CASUAL EJECTOR, the fictitious *Richard Roe*, in the mixed action of ejectment. The declaration states, that a lease of the premises in question, for a term of years, had been made by the party claiming the title (who is the real plaintiff) to a fictitious *John Doe* (who is the lessee of the plaintiff), who entered upon the land by virtue of such demise, and that afterwards *Richard Roe* (the casual ejector) entered and ousted *John Doe*, during the continuance of his term. Appended to this declaration is a notice supposed to be signed by *Richard Roe*, addressed to the tenant in possession (who is the actual defendant). The notice informs the tenant of the action having been brought by the lessee, and of *Richard Roe* having no title to the premises, and advises him to appear at a certain time and defend his title, otherwise he, *Richard Roe*, will suffer judgment by default, and then the actual defendant will be turned out of possession by the sheriff, under the writ of *habere facias possessionem*.

CASUALTY OF WARDS, the mails and duties due to the superiors in ward-holdings. *Scotch Dict.*

CASU CONSIMILI, a writ of entry, granted where tenant by the courtesy, or tenant for life, aliens in fee, or in tail, or for another’s life, and is brought by him in reversion against the party to whom such tenant so aliens to his prejudice, and in the tenant’s lifetime. *Termes de Ley*. Abolished.

CASU PROVISIO, a writ of entry, given by the Stat. of Gloucester, c. 7, where a tenant in dower aliens in fee, or for life, &c., and it lies for him in reversion against the alienee. *F. N. B.* 207. Abolished.

CASUS FÆDERIS, a case stipulated by treaty, or which comes within the terms of a compact.

CASUS OMISSUS, a point unprovided for by statute, &c.

Casus fortuitus non est sperandus; et nemo tenetur divinare. 4 Co. 66.—(A fortuitous event is not to be foreseen; and no person is understood to divine.)

Casus omissus et oblivioni datus dispositioni communis juris relinquitur. 5 Co. 37.—(A case omitted and given to oblivion, is left to the disposal of the common law.)

Casus omissus habetur pro amisso. (An omitted case is deemed as lost.)

Catalla justè possessa amitti non possunt. Jenk. Cent. 28.—(Chattels justly possessed cannot be lost.)

Catalla reputantur inter minima in lege. Ibid. 52.—(Chattels are considered in law among the minor things.)

CATALS, goods and chattels.

CATALLIS CAPTIS NOMINE DISTRICTIONIS, an obsolete writ that lay where a house was within a borough, for rent going out of the same, and which warranted the taking of doors, windows, &c., by way of distress. *Old Nat. Bre.* 66.

CATALLIS REDDENDIS, an obsolete writ that lay where goods being delivered to any man to keep till a certain day, are not upon demand delivered at the day. *Reg. Orig.* 39.

CATAPULTA, a warlike engine to shoot darts; a crossbow.

CATASCOPUS, an archdeacon. *Du Cange.*

CATCHLAND. In Norfolk there are some grounds which it is not known to what parish they certainly belong, so that the minister who first seizes the tithes, does by that right of pre-occupation enjoy them for that year. *Cowel.*

CATCHPOLE, a sheriff's officer or bailiff, so called because he catches by the poll or head the party arrested.

CATEGORY, a series or order of all the predicates or attributes contained under a genus.

CATHEDRAL, the church of the bishop and head of the diocese.

CATHREDRATIC, a sum of 2s. paid to the bishop by the inferior clergy; but from its being usually paid at the bishop's *synod*, or visitation, it is commonly named *synodals*. *Burn's Dict.*

CATHOLIC [*καθολικὸς*, Gk.], universal, general. The rise of heresies induced the primitive Italian church to assume to itself the appellation of catholic, being a characteristic to distinguish itself from all private or particular sects. The Romish church, assuming this claim, distinguishes itself by the name of catholic, in opposition to all those who have separated from her communion in the eucharist, and whom she considers as heretics and schismatics, and herself only as the true and Christian church. In the strict sense of the word, there is no catholic church in being, that is, no universal Christian community; to the want of which, some philosophers have attributed the wide and boundless stride of Mahometanism. *Encyc. Lond.*

CATTLE [derived by Skinner, Menage, and Spelman from *capitalia*, *quæ ad caput pertinent*, personal goods; in which sense *chattels* is yet used. Mandeville uses *catele*, for price], beasts of pasture, neither wild nor domestic.

CATZURNS, a hunting horse.

CAUDA TERRÆ, a land's end, or the bottom of a ridge in arable land.

CAUSA MORTIS (in prospect of death).

CAVEAT (that he take heed), a warning or caution. If a person desire to stop the enrolment of a decree in Chancery, in order

to present a petition of appeal to the Lord Chancellor, he enters a *caveat* with his Lordship's secretary, which prevents the enrolment for twenty-eight days; it is sometimes entered to prevent the issuing of a lunacy commission. Also it is entered in the spiritual courts, by which the probate of a will, letters of administration, license of marriage, institution of a clerk to a benefice, may be prevented upon proper grounds.

CAVEAT ACTOR, CAVEAT EMPTOR (let the doer—let the purchaser beware).

Caveat emptor; qui ignorare non debuit quod jus alienum emit. Hob. 99.—(Let a purchaser beware what he does; for he who purchases another's right ought not to be ignorant of the matter.)

Lord Thurlow, in *Lowndes v. Lane*, 2 Cox, 363, said that, as to the extent of this maxim, he was willing to carry it to a great extent, but not to the extent of saying it should apply where there was a positive representation essentially material to the subject sold, and which at the same time is false in fact. He said he must consider any fundamental mistake in the particulars of an estate as furnishing a case in which the purchaser would be entitled to have the mistake set right, if recently applied for. "If a man," said Tindal, C. J. (*Brown v. Edgington*, 2 Scott, N.R. 504), "purchase goods of a tradesman, without, in any way, relying upon the skill and judgment of the vendor, the latter is not responsible for their turning out contrary to his expectation; but, if the tradesman be informed at the time the order is given of the purpose for which the article is wanted, the buyer relying upon the seller's judgment, the latter impliedly warrants that the thing furnished shall be reasonably fit and proper for the purpose for which it is required."

CAULCEIS, ways pitched with flint or other stones. See CALCETUM.

CAUSA MATRIMONII PRÆLOCUTI, a writ which lies where a woman gives lands to a man in fee simple, &c., to the intent he should marry her, and he refuses to do so in any reasonable time; being thereunto required. *Reg. Orig.* 66. Abolished by 3 & 4 Wm. IV., c. 27.

Causæ dotis, vitæ, libertatis, fisci, sunt inter favorabilia in lege. Jenk. Cent. 284.—(Causes of dower, life, liberty, revenue, are among the favourable things in law.)

Causa ecclesiæ publicis causis æquiparatur; et summa est ratio quæ pro religione facit. Co. Lit. 341.—(The cause of the church is equal to public causes; and for the best of reasons, it is the cause of religion.)

Causa et origo est materia negotii. 1 Co. 99.—(Cause and origin is the material of business.)

Causa spiritualis committi potest principi laico. Da. 4.—(A spiritual cause may be committed to a chief layman.)

Causa vaga et incerta non est causa rationabilis. 5 Co. 57.—A vague and uncertain cause is not a rational cause.)

CAUSAM NOBIS SIGNIFICES QUARE,

a writ addressed to a mayor of a town, &c., who was by the King's writ commanded to give seisin of lands to the King's grantee, on his delaying to do it, requiring him to shew cause why he so delays the performance of his duty.

CAUSEA, a causeway.

CAUTION, a species of bail.

CAUTIONE ADMITTENDA, a writ that lies against a bishop who holds an excommunicated person in prison for contempt, notwithstanding he offers sufficient caution or security to obey the orders and commandment of the church for the future. *Reg. Orig.* 66.

CAVERS, offenders relating to the mines in Derbyshire, punishable in the berghmote, or miners' court; also officers belonging to the same mines.

CEAP, a bargain; anything for sale; chattel; also cattle, as being the usual medium of barter. Sometimes used instead of—

CEAPGILDE [*ceap*, Sax., cattle, and *gild*, payment], payment in cattle, market price.

CEAPIAN, to make a bargain.

CELER LECTI, the top, head, or tester of a bed.

CELIBACY, an unmarried or single state of life.

CELLERARIUS, a butler in a monastery; sometimes called manciple or caterer.

CEMETERY, a place of burial, differing from a church-yard by its locality and incidents; by its locality, as it is separate and apart from any sacred building used for the performance of divine service; by its incidents, that inasmuch as no vault or burying-place in an ordinary church-yard can be purchased for a perpetuity, in a cemetery a permanent burial-place can be obtained.

CENDULÆ, small pieces of wood laid in the form of tiles, to cover the roof of a house.

CENEGILD [*cinæ*, Sax., relation, and *gild*, payment], an expiatory mulct paid by one who killed another, to the kindred of the deceased.

CENELLÆ, acorns from the oak.

CENNINGA, notice given by a buyer to a seller that the thing sold was claimed by another, in order to appear and justify the sale. *Athel. ap. Brompt. c.* 4.

CENSARIA [*cense*, Fr.], a farm or house and land let at standing rent.

CENSARII, farmers. *Blount.*

CENSUALES, a species or class of the *oblati* or voluntary slaves of churches or monasteries, i. e., those who, to procure the protection of the church, bound themselves to pay an annual tax or quit rent only of their estates to a church or monastery. Besides this, they sometimes engaged to perform certain services. *Potg. de Stat. Sero., l.* 1, c. 1, §§ 6, 7.

CENSUMETHIDUS, a dead rent, like that which is called *mortmain*. *Blount.*

CENSURE [*census*, Lat.], a custom observed in certain manors in Devon and Cornwall, where all persons above the age of sixteen years are cited to swear fealty to the lord,

and to pay 11d. per poll, and 1d. per annum ever after; these thus sworn are called censers. Also a judgment which condemns some book, person, or action, or more particularly a reprimand from a superior. *Surv. Dict. Corn.*

CENSUS, a numbering of the people. It takes place once in every ten years.

CENT [*centum*, a hundred], a hundred pounds. A profit of 10l. per cent. is the gain of 10l. by the use of 100l.

CENSUS REGALIS, the annual revenue (or income) of the Crown.

CENTENarii, petty judges, under-sheriffs of counties, that had rule of an hundred, and judged smaller matters among them. *1 Vent.* 211.

CENTRAL CRIMINAL COURT, the most important criminal tribunal in this country, as well from the authority of the Judges who preside there, as from the number and magnitude of the crimes which are tried before it. This Court was erected in 1834, by 4 & 5 W. IV., c. 36, which, reciting that it was expedient for the more effective and uniform administration of justice in criminal cases, that offences committed in the metropolis, and certain parts adjoining thereto, should be tried by Justices and Judges of oyer and terminer, and gaol delivery in the city of London,—proceeded to constitute a new tribunal, which it entitled "The Central Criminal Court," to consist of the Lord Mayor, the Lord Chancellor, the Judges of the three Superior Courts at Westminster, the Judges in Bankruptcy, the Judges of the Admiralty, the Dean of the Arches, the aldermen, recorder, and common serjeant of London, the Judges of the Sheriffs' Court, and any person who had, or shall have been Lord Chancellor, a Judge of any of the Superior Courts at Westminster, or who might be thereafter appointed by general commission of the Queen. To this Court her Majesty may issue commissions of oyer and terminer, and gaol delivery, for the trial of all cases of treasons, murders, felonies, and misdemeanors committed within the city of London and county of Middlesex, and in certain specified parts of the counties of Essex, Kent, and Surrey, all of which constitute a district which is to be, for the purposes of that act, deemed and taken to be *one county*. The court sits at the Sessions House, in the Old Bailey; and there are at least twelve sessions held in every year, at times fixed by any eight of the Judges at Westminster. Two provisions in this statute, and also several subsequent statutes, greatly augmented the jurisdiction of this tribunal, by first curtailing that of the Courts of Quarter Sessions within the district assigned to the Central Criminal Court, and restraining them from trying nearly all the serious kinds of felony (4 & 5 W. IV., c. 36, § 17); and by transferring to it the entire criminal jurisdiction of the Court of Admiralty (§ 22), followed up, in 1837, by 7 Wm. IV., & 1 Vict., cc. 84—89, by the operation of which,

all the serious offences punishable under them, if committed within the jurisdiction of the Admiralty, may be, and have ever since been, tried at the Central Criminal Court. During every session, two of the Judges of the Superior Courts at Westminster preside in this Court for the purpose of trying the more important offences. The remainder are tried by either the recorder or common serjeant, or a Judge from the sheriff's court, commissioned for that purpose; on every occasion the Lord Mayor or some of the aldermen being also present on the bench. There are two courts adjoining each other, which sit simultaneously.

CEOLA, a large ship. *Blount*.

CEPI CORPUS ET PARATUM HABEO (I have taken the body and have it ready), a return made by the sheriff upon an attachment, *capias*, &c., when he has the person against whom the process was issued in custody. *F. N. B.* 26.

CEPPAGIUM, the stumps or roots of trees which remain in the ground after the trees are felled. *Fleta*, l. 2, c. 41.

CERAGIUM, a payment to find candles in the church. *Blount*.

Certa debet esse intentio, et narratio, et certum fundamentum, et certa res quæ deducitur in judicium. Co. Lit. 303.—(The intention ought to be certain, and the count and foundation, and the thing which is brought to judgment.)

CERTIFICANDO DE RECOGNITIONE STAPULÆ, a writ commanding the mayor of a staple to certify to the Lord Chancellor a statute staple taken before him where the party himself detains it, and refuses to bring in the same. There is the like writ to certify a statute merchant, and in divers other cases. *Reg. Orig.* 152.

CERTIFICATE, a testimony giving in writing to declare or verify the truth of anything. There are several sorts, the principal of which are the following:—

1. Certificates of acknowledgment of married women. Every deed executed by a married woman for any of the purposes of the Act of 3 & 4 Wm. IV., c. 74 (not executed by her as protector) shall, upon her executing the same, or afterwards, be produced and acknowledged by her as her act and deed before a Judge of one of the Superior Courts at Westminster, or a Master in Chancery, or before two of the perpetual commissioners, or two special commissioners, appointed as presently noticed (§ 79). And such Judge, Master in Chancery, or commissioners, before receiving the acknowledgment, shall examine her, apart from her husband, touching the knowledge of such deed, and shall ascertain whether she freely and voluntarily consents to such deed, otherwise the deed cannot be acknowledged, and, so far as relates to her, is void (§ 80). The Lord Chief Justice of the Common Pleas shall appoint proper persons for every county, riding, division, soke, or place for which there may be a clerk of the peace, to be

perpetual commissioners for taking such acknowledgments, who are removable at his pleasure; and lists of their names, with their residences and the places to which they are appointed, shall be kept by the officer of the Common Pleas, with whom the certificates of the acknowledgments are lodged; and such officer transmits to the clerks of the peace the lists relating to their locality, a copy of which may be obtained by any person (§ 81). These perpetual Commissioners are competent to take the acknowledgment of any married woman wheresoever she may reside, and wheresoever the lands, &c., may be (§ 82).

If from being beyond seas, or from ill health, or any other sufficient cause, a married woman be prevented from making the acknowledgment before a Judge, Master in Chancery, or special commissioners, the Court of Common Pleas, or any Judge thereof, may issue a commission appointing special commissioners to take such acknowledgment (§ 83).

When a married woman acknowledges a deed, the person taking the acknowledgment signs a memorandum, endorsed on or written at the foot or in the margin of such deed (§ 84).

And the same person also signs a certificate of the taking of such acknowledgment, written or engrossed on a separate piece of parchment.

Every such certificate, together with an affidavit verifying the same, and the signature, shall be lodged with some officer of the Common Pleas, who, after examining it to see that every thing is correct, files the same of record (§ 85). This certificate being filed, the deed takes effect by relation from the time of the acknowledgment (§ 86). An index of certificates is to be kept and a copy of certificate filed, duly signed by the proper officer, is evidence (§§ 87, 88).

The Lord Chief Justice of the Common Pleas appoints the officer with whom the certificate shall be lodged, and the Court of Common Pleas is empowered to make orders touching the examination, memoranda, certificates, and affidavits, the time when the proceedings shall take place, and the amount of fees (§ 89).

In pursuance of this power, the Court of Common Pleas promulgated a set of rules in Michaelmas Term, 1833; but they were revoked (but so as not to invalidate any proceedings under them, which might take place before the 1st March, 1834) by the rules of Hilary Term, 1834, which were varied in a very few points by the rules of Trinity Term, 1834.

The substance of the rules now in force is as follows:—

One, at least, of the Commissioners must not be in any manner interested in the transaction, or concerned therein as attorney, solicitor, or agent, or as his clerk.

The commissioners, before receiving the acknowledgment, or if one of them be inte-

rested, then the other who is not interested, must enquire of any married woman separately and apart from her husband, and from the solicitor or attorney concerned in the transaction, whether she intends to give her interest in the estate to be passed by such deed, without having any provision made for her in lieu of or return for or in consequence of her so giving up such interest, and if she declare there is no provision, and the commissioners believe it, then they shall receive the acknowledgment; but if it appear that provision is to be made, then they shall not take her acknowledgment until they are satisfied that such provision has been actually made by some deed or writing produced to them, or if not actually made, then the commissioners shall require the terms of such intended provision to be shortly reduced into writing, and shall verify the same by their signatures in the margin, at the foot, or at the back thereof.

The affidavit verifying the certificate shall (except the acknowledgment be taken elsewhere than in England, Wales, or Berwick upon Tweed) be made by some practising attorney or solicitor of one of the Courts of Westminster, or of one of the counties palatine of Lancaster or Durham, and that in all cases it shall be deposed, in addition to the verification of the certificate, that the deponent (or if more than one person join in the affidavit), that one or more of the deponents knew the person making such acknowledgment, and that she is of full age and competent understanding, and that one at least of the commissioners, to the best of deponent's knowledge and belief, is not in any manner interested or concerned in the transaction, and that the names and residences of the commissioners, and also the place where the acknowledgment is taken, shall be set forth in such affidavit. And that previously to the acknowledgment, the deponent had enquired of her whether she intended to give up her interest in the estate to be passed, and also her answer thereto, and if she declare that she intends to give up her interest without any provision, the deponent shall state that he has no reason to doubt its truth, and he verily believes the same to be true. And where there is to be a provision, the deponent shall state that the same has been made by deed or writing, or if not actually made, that the terms of the intended provision have been reduced into writing, which he verily believes has been produced to the said commissioners.

The affidavit must further state the parish or several parishes, or place or several places, and the county or counties in which the several premises wherein any such married woman shall appear to be interested, shall by deed be described to be situate. The form of the affidavit is given, which is subject to such variations as the circumstances of the case render necessary, and it may be made (where it is found convenient) by one of the commissioners.

The certificates and affidavits verifying the same must, *within one month* from making the acknowledgment, be delivered to the proper officer (whose office is in Serjeants' Inn, Chancery Lane) who cannot receive the same after such time, without the direction of the Court or Judge.

The fees to be paid for the copies to be delivered by the clerks of the peace or their deputies, or by the officers of the Common Pleas, are then set forth.

2. Annual certificate of attornies. It expires on the 15th November in every year, without any reference to the day on which it was issued. If taken out before the 16th December it will have relation back to the 15th November, and protect from penalties incurred before that time for having practised without a certificate; but if taken out on or after the 16th December it will have relation only to the day on which it was issued; and if it be not issued before the end of the year, the attorney's name will not appear in the Law List. The duty payable is thus regulated: if the attorney reside within London or Westminster, or within the limits of the district post, then, if he have not been admitted three years, the yearly duty is 6*l.*, but if three years or more, 12*l.*; if he reside beyond these limits and have not been admitted three years, 4*l.* yearly; but if three years or more, 8*l.* The Incorporated Law Society is appointed registrar of attornies and solicitors. Consult 7 & 8 *Vict.*, c. 73, §§ 21—26.

3. Certificate of appointment of the creditors' assignees to a bankrupt's estate and effects. In town fiats, by General Order Jan. 12, 1832, r. 20, the appointment of any assignees to any bankrupt's estate shall be under the hand of the commissioner, and shall remain of record in the Court of Bankruptcy, and certificates of such appointment, under the seal of the Court, shall be delivered to such assignees by the registrar upon application for the same. In country fiats, duplicate certificates of the appointment of the assignees shall be made and signed by the commissioner, one to remain with the proceedings, the other to be transmitted with an affidavit of the attesting witness to the Court of Bankruptcy in London. *Gen. Ord.*, March 27, 1832.

4. Certificate of conformity of a bankrupt; an instrument whereby the commissioner certifies to the Court of Review in Bankruptcy, the adjudication, the advertisement in the Gazette, the several meetings or sittings under the fiat in pursuance of such advertisement, the bankrupt's surrender, and having passed his last examination, that he has made a full discovery of his estate and effects, and in all things conformed himself to the laws in force at the time of issuing the fiat, and that there does not appear any reason to doubt the truth or fulness of such discovery. It is no longer requisite that the creditors should sign it, for the granting it is in the judgment and discretion of the

commissioner, who has acted in prosecution of the fiat, having regard not only to the conformity of the bankrupt, but also to his conduct as a trader before as well as after his bankruptcy, and any of the creditors may be heard before the commissioner against the allowance of the certificate, for which purpose a public sitting is to be appointed, of which twenty-one days' notice must be given in the London Gazette, and to the assignee's solicitor; and upon such hearing the commissioner has the power to allow or refuse to allow, or to suspend the allowance of such certificate, or annex any conditions to it. The certificate is then laid before the Court of Review for confirmation, and notice thereof must be given in the London Gazette, that unless cause be shewn to the contrary on or before a certain day, which is always the twenty-first day from the advertisement, the Court will then confirm it, upon the bankrupt's affidavit, that it was obtained fairly and without fraud. It is then duly enrolled, and can be given in evidence, making the bankrupt, as it were, a *novus homo*. 5 & 6 Vict., c. 122. As to the cases in which it is suspended, stayed, recalled, or void, see *Flather's Arch.* 344.

5. Certificates of counsel; these are given as to a pauper having a good cause of suit or action, when he intends to sue *in forma pauperis*; also in the case of petitions of appeal in Chancery suits, apprehending that the cause is proper to be reheard; also a certificate of respectability is required to be signed by two counsel before a student can be admitted to keep his terms at any of the Inns of Court.

6. Certificates of the Judges of the Superior Common Law Courts at Westminster. They are numerous; the chief, however, are, (a) as to a special jury. The party upon whose application it is struck shall bear all the expenses occasioned at the trial of the cause by such special jury, and shall not be allowed upon taxation of costs, any more or other costs than he would have been entitled to if the cause had been tried by a common jury, unless the Judge shall, immediately after the verdict, certify, upon the back of the record, that it was a proper cause to be tried by a special jury. (b) For speedy execution. By 1 Wm. IV., c. 7, § 2, it is enacted, "that in all actions brought in either of the Superior Courts, by whatever form of process the same may be commenced, it shall be lawful for the Judge before whom any issue joined in such action shall be to be tried, in case the plaintiff or demandant therein shall become nonsuit, or a verdict shall be given for the plaintiff or demandant, defendant or tenant, to certify under his hand on the back of the record, at any time before the end of the sittings or assizes, that in his opinion execution ought to issue in such action forthwith, or at some day to be named in such certificate, and subject or not to any condition or qualification; and in case of a verdict for the plaintiff, then either for the whole or for any part of the

sum found by such verdict; in all which cases a rule for judgment may be given, costs taxed, and judgment signed forthwith, and execution may be issued forthwith or afterwards, according to the terms of such certificate, on any day in vacation or term; and the postea, with such certificate as a part thereof, shall and may be entered of record as of the day on which the judgment shall be signed, although the writ of *distingas juratores*, or *habeas corpora juratorum*, may not be returnable until after such day, provided always, that it shall be lawful for the party entitled to such judgment to postpone the signing thereof." (γ) By 46 Eliz., c. 6, § 2, if in a personal action "not being for any title or interest of lands, nor concerning the freehold or inheritance of any lands, nor for any battery, it shall be certified by the Judge, (not the sheriff or Judge of an inferior court, trying under the 3 & 4 Wm. IV., c. 42, § 17, nor on a writ of enquiry, before whom it shall be tried), that the debt or damages to be recovered therein do not amount to 40s., the plaintiff shall have no more costs than damages, but less at the discretion of the Court." (δ) By 22 & 23 Car. 2, c. 9, in all actions of trespass, assault and battery, and all other personal actions, wherein the Judge at the trial shall not find and certify under his hand, upon the back of the record, that an assault and battery was sufficiently proved, or that the freehold and title of the land was chiefly in question, in case the jury find the damages to be under the value of 40s., the plaintiff shall not recover or obtain any more costs than the damages so found shall amount to." (ε) For the preventing of wilful and malicious trespasses, it is enacted by 8 & 9 Wm. III., c. 11, § 4, "that in all actions of trespass to be commenced or prosecuted in any of his Majesty's Courts of Record at Westminster, wherein at the trial of the cause it shall appear and be certified by the Judge under his hand, upon the back of the record, that the trespass upon which any defendant shall be found guilty, was wilful and malicious, the plaintiff shall recover not only his damages, but also his full costs of suit, any former law to the contrary notwithstanding." The Judge has power to certify in actions for the infringement of patents under 5 & 6 Wm. IV., c. 83, § 3, and where there are several issues under 4 & 5 Ann., c. 16, §§ 4, 5. (ζ) The 3 & 4 Vict., c. 24, enacts, that in actions of trespass, or trespass on the case, if the plaintiff recover less than 40s., he shall not have his costs, unless the judge certify that the action was not frivolously brought.

7. Trial by certificate. This is now of very rare occurrence, but is still in force upon certain issues, which are enumerated in 3 Bl. Com. 333; one of the most important of which is the issue of *ne unques accouple en loial matrimonie*. This arises in the action of dower, in which the tenant may plead in bar that the demandant "was never accoupled to her alleged husband in lawful

matrimony." Issue being joined upon this, the Court awards that it be tried by the diocesan of the place where the parish church in which the marriage is said to have been had is situate, and that the result be certified to them by the ordinary at a given day. It is said that this is a form of issue which can arise only in dower. The trial by certificate is, when competent, the only legitimate mode, and the issue cannot be tried by jury. *Step. Plead.* 113.

CERTIFICATES in the customs. No goods can be exported by certificate, except foreign goods formerly imported, on which the whole or a part of the customs paid on importation is to be drawn back. The manner of proceeding is regulated by 3 & 4 Wm. IV., c. 52, § 68.

CERTIFICATION, assurance; also when the Judge ascertains the party called, and not comparing what he will do in that case. *Scotch Dict.*

CERTIFICATION OF ASSIZE, a writ anciently granted for the re-examining or re-trial of a matter passed by assize before justices, now entirely superseded by the remedy afforded by means of a new trial.

CERTIORARI (to be informed of). An original writ issuing out of the common law jurisdiction of the Court of Chancery in civil cases, and the Crown side of the Court of Queen's Bench in criminal cases, addressed, in the Queen's name, to the Judges or the officers of inferior courts, commanding them to certify or to return the records of a cause depending before them, to the end the party may have the more sure and speedy justice, before such justices as shall be assigned to determine the cause. *F. N. B.* 145, 242, 554. The *certiorari* in civil matters lies in all cases before judgment, whether the action were commenced by process against the person or not; and it may be sued out to remove an ejectment, as well as other actions pending in inferior courts of record. *Chit. Arch. Prac.* 944. In criminal cases, it lies to remove into the Queen's Bench, which is the sovereign ordinary court of justice in criminal causes, all indictments, coroners' inquisitions, summary convictions by magistrates, orders of removal of paupers, and of poor's rates, also orders made by the poor law commissioners, commissioners of sewers, tithes-commissioners, town councils, and railway companies, for the purpose of being examined and determined upon. Thus, also, are all inquisitions, examinations, depositions, and recognizances brought under the review of the court, principally for the purpose of a defendant's being bailed. The writ may be granted either at the instance of the prosecutor, as a matter of right, or the defendant, as a matter of discretion; but to prevent abuses, by the wanton and improvident application for it, the 5 & 6 Wm. IV., c. 33, provides, that the prosecutor must obtain the previous leave of the court to issue it, and a defendant must enter into recognizances.

CERTIORARI, *bill of*, filed to remove a

suit pending in some inferior court of equity, as the Courts of Chancery in the counties palatine of Durham and Lancaster, the courts of the two Universities of Oxford and Cambridge, the courts of the City of London, and the Cinque Ports, into the High Court of Chancery, on account of some alleged incompetency of the inferior court, or some injustice in its proceedings. The bill first states the proceedings in the inferior court, and then the cause of such court's incompetency, by suggesting that the cause is out of its jurisdiction; or that the witnesses live out of its jurisdiction; or that the defendants live out of its jurisdiction, and are not able, by age or infirmity or the distance of the place, to follow the suit there; or that for some other cause, equal justice is not likely to be done them; and it then prays a writ of *certiorari*, to certify and remove the record and the cause to the Superior Court. It does not pray that the defendant may answer or even appear to the bill, and consequently it prays no writ of subpoena, though a subpoena must be sued out and served. When the cause is removed from the inferior court, the bill exhibited in that court is considered as an original bill in the Court of Chancery, and is proceeded upon as such. If the suggestions of the *certiorari* bill are not proved, a writ of *procedendo* may be obtained, and addressed to the Judge of such inferior court, requiring him to proceed in the cause sought to be removed, as the plaintiff in the *certiorari* bill had not proved his suggestions. *Story's Eq. Plead.* 241.

CERT MONEY, *quasi* certain money. Head money paid yearly by the residents of several manors to the lords thereof, for the certain keeping of the leet, and sometimes to the hundred. It is called *certum letæ* in ancient records.

Certum est quod certum reddi potest. 9 Co. 47.—(That is certain which can be rendered certain.)

Lord Ellenborough observed, that a reasonable time is as capable of being ascertained by evidence, and, when ascertained, is as fixed and certain, as if defined by a particular Act of Parliament. 2 M. & S. 50.

CERVISARII [*cervisia*, ale], a duty called by the Saxons *drinclean*, i. e., *retributio potûs*, paid by tenants. It vulgarly means beer or ale brewers.

CERURA, a mound, fence, or inclosure.

Cessa regnare, si non vis judicare. Hob. 155.—(Cease to reign, if you wish not to adjudicate.)

Cessante causâ, cessat effectus. Wing. 29.—(The cause ceasing, the effect ceases.)

Cessante primitivo, cessat derivativus.—(The primitive ceasing, the derivative ceases.)

Cessante ratione legis, cessat ipsa lex. Co. Lit. 70.—(The reason of the law ceasing, the law itself ceases.)

This maxim may be thus illustrated:—where a contract, not under seal, is made with an agent in his own name, for an undisclosed principal, and on which, therefore, either the agent or principal may sue, the

defendant as against the latter, is entitled to be placed in the same situation at the time of the disclosure of the real principal, as if the agent dealing in his own name had been in reality the principal, and this rule is to prevent the hardship under which a purchaser would labour, if, after having been induced by peculiar considerations,—such, for instance, as the consciousness of possessing a set-off,—to deal with one man, he could be turned over and made liable to another, to which those considerations would not apply, and with whom he would not willingly have contracted.

Cessante statu primitivo, cessat derivativus. 8 Co. 34.—(The original estate ceasing, the derivative ceases.)

CESSAVIT, a writ which lay (by the Statute of Gloucester, 6 Ed. I., c. 4, and Westminster 2, 13 Ed. I., c. 21), when a man who held lands by rent or other services, neglected or ceased to perform his services for two years together, or where a religious house had lands given to it, on condition of performing some certain spiritual services, as reading prayers, giving alms, &c., and neglected it; in either of which cases, if the cesser or neglect had continued for two years, the lord, or donor, and his heirs, had a writ of cessavit to recover the land itself. *F. N. B.* 208. This writ was abolished by 3 & 4 Wm. IV., c. 27.

CESSE, an assignment, or tax. In Ireland, it was anciently applied to an exaction of victuals, at a certain rate, for soldiers in garrison. *Antiq. Hibern.*

CESSER, *proviso for*. Where terms for years are raised by settlement, it is usual to introduce a proviso that they shall cease when the trusts are at an end. This proviso generally expresses three events: (1,) the trusts never arising; (2,) their becoming unnecessary or incapable of taking effect; (3,) the performance of them. 3 *Sug. V. & P.* 3.

CESSET EXECUTIO (let execution stay). Where the defendants plead severally, if they be found guilty of the same act of trespass, the jury cannot sever the damages, but the jury who try the first issue shall assess damages against all; and there shall be a *cesset executio* until the other issues are tried, when the other defendants, if found guilty, shall be contributory to those damages. 11 Co. 6 a, 7 a.

CESSIO BONORUM (a surrender of goods). By the Roman law a *cessio bonorum* of the debtor, was not a discharge of the debt, unless the property ceded was to the full, sufficient for that purpose. It otherwise operated only as a discharge *pro tanto*, and exonerated the debtor from imprisonment. Huberns informs us, that in Holland, a *cessio bonorum* does not even exempt from imprisonment, unless the creditors assent, and Heineccius proclaims the same as the law of some parts of Germany. The Scotch law conforms to the Roman code in its leading outlines, and the modern code of France adopts the same system. A discharge from our insolvent code, merely protects the persons discharged

from arrest, his future property being liable, his subsequent creditors, however, having the first claim upon it; but a certificate from a bankrupt court protects both the person and his after acquired property, unless it be his second bankruptcy, and he has not paid 15s. in the pound under such second fiat, then his person only is protected from arrest. *Story's Conflict of Laws*, 492.

CESSION, a ceasing, yielding up, or giving over. By 21 Hen. VIII., c. 13, if any one having a benefice of 8*l.* *per annum*, or upwards (according to the present valuation in the King's books), except deaneries, arch-deaconries, chancellorships, treasurerships, chanterhips, prebends, and sinecure rectories, accept any other, the first shall be adjudged void, unless he obtain a dispensation, which no one is entitled to have but the chaplains of the livings and others therein mentioned, the brethren and sons of lords and knights, and all doctors and bachelors of divinity, doctors of laws, and bachelors of the law canon, admitted by the universities of this realm. A vacancy thus made, for want of a dispensation, is called cession. 1 *Bl. Com.* 392.

CESSIONARY BANKRUPT, one who has given up his estate to be divided amongst his creditors.

CESSMENT, an assessment or tax.

CESSOR, he who ceases or neglects so long to perform a duty, that he thereby incurs the danger of the law. *Old Nat. Br.* 136.

CESSURE, or **CESSOR**, ceasing, giving over, departing from.

CESTUI QUE TRUST, the person who possesses the equitable right to deal with lands and receive the rents, issues, and profits thereof, the legal estate in which is vested in a trustee, and there is such a confidence between the *cestui que trust* and his trustee, that no action at law will lie between them, but they must settle their differences and arrange their disputes in a Court of Equity.

The phrase, *cestui que trust*, is a barbarous Norman law French phrase; and is so ungainly and ill adapted to the English idiom, that it is surprising that the good sense of the English legal profession has not long since banished it, and substituted some phrase in the English idiom, furnishing an analogous meaning. In the Roman law the trustee was commonly called *Hæres Fiduciarius*; and the *cestui que trust*, *Hæres Fidei Commissarius*, which Dr. Halifax has not scrupled to translate *Fide—Committee* (*Halifax Anal. of Civil Law*, ch. 6, § 16, p. 34; *Id.* ch. 8, §§ 2, 3, pp. 45, 46). Mr. Justice Story prefers *Fide—commissary*, as at least equally within the analogy of the English language. But *Beneficiary*, though a little remote from the original meaning of the word, would be a very appropriate expression, as it has not as yet acquired any general use in a different sense. *Hæres fidei commissarius* was sometimes used in the Civil Law, to denote the trustee. *Vicat, Vocab.*

voce *Fidei commissarius*. The French Law calls the *cestui que trust*, *fidei commissaire*. *Ferriere Dict*, voce *Fidei commissaire*. *Merlin Repertoire* voce *Substitution et Substitution fidei commissaire*. Dr. Brown uses the word *Fidei commissary*. 1 *Brown Civil Law*, 190. n.

CESTUI QUE USE, in old law tracts *cestui à que use*. Previously to the Statute 27 Hen. VIII., c. 10 (usually called the Statute of Uses), the use was an equitable or beneficial interest enjoyed by the *cestui que use*, distinct from the legal property in the land, which was held by the feoffee to uses. The Statute of Uses destroyed the intervening estate of the feoffee to uses, and transferred the possession to the *cestui que use*, converting his equitable or beneficial interest into a legal estate; thus the use and possession being incorporated, the separate existence of the use is virtually extinguished, and he, who was called the *cestui qui use* before the statute, is now, to all intents and purposes, the legal owner, the use being executed in him. Thus a conveyance transmuting the possession to A., to the use of B., A.'s estate (feoffee to uses) is destroyed by the statute, the possession is given to B. (*cestui que use*) in whom the legal estate is vested.

CESTUI QUE VIE, the person for whose life any lands, tenements, or hereditaments may be held.

Chacea est ad communem legem. Reg. Br. 806. —(A chace is by common law.)

CHACEA, a station of game, more extended than a park, and less than a forest; also the liberty of chasing or hunting within a certain district; also the way through which cattle are driven to pasture, otherwise called a drove way. *Blount; Bract. l. 4, c. 44*.

CHACEARE *ad lepores vel vulpes*. To hunt hares or foxes. *Cart. Abb. Glast. MS. 87*.

CHACURUS [*chasseur*, Fr.], a horse for the chace, or a hound, dog, or courser.

CHAFEWAX, an officer in Chancery, who fits the wax to seal the writs, commissions, and such other instruments as are there made to be issued.

CHAFFERY, traffic; the practice of buying and selling.

CHALDRON, CHALDERN, or CHALDER, twelve sacks of coals, each holding three bushels, weighing about a ton and a half. In Wales they reckon twelve barrels or pitchers a ton or chaldron, and 29 cwt. of 120 lbs. to the ton.

CHALKING, stopping the seams in a ship or vessel. *Rot. Parl., 50 Ed. III*.

CHALLENGE, an exception taken either against things or jurors.

In civil actions, when a full jury appear, either party may challenge them for cause, as well the talesmen as the jurors originally returned. Challenges are of two kinds: (1) to the array, (2) to the polls, and each of these is again subdivided into principal challenges, and challenges to the favour.

(1) A challenge to the array is an objection to all the jurors returned by the sheriff,

collectively, not for any defect in them, but for some partiality or default in the sheriff or his under-officer who arrayed the panel: this is either (a) a principal challenge, as that the sheriff or other returning officer is of kindred or affinity to the plaintiff or defendant, if the affinity continue; that one or more of the jury are returned at the nomination of the plaintiff or defendant; that an action of battery is pending at the suit of the plaintiff or defendant against the sheriff, or at the suit of the sheriff against the plaintiff or defendant; that an action of debt is pending at the suit of the plaintiff or defendant against the sheriff, but not if by the sheriff against the plaintiff or defendant; that the sheriff or returning officer holds land depending upon the same title with that in litigation between the parties; that the sheriff, &c., is under the distress of the plaintiff or defendant; that the sheriff, &c., is counsel, attorney, officer, servant, or gossip of either party, or is an arbitrator in the same matter, and has treated thereof. (6) A challenge for favour, being such as implies at least a probability of bias or partiality in the sheriff, but does not amount to a principal challenge, as that the plaintiff or defendant is tenant to the sheriff, or that the parties are connected by marriage, &c. It seems very doubtful if the array in special jury cases can be challenged. Challenges to the array are however, seldom resorted to, since, for the causes above-named, the jury-processes may be directed to the coroner, or they would be grounds for a new trial.

(2) A challenge to the polls, which is an exception to one or more of the jurors who have appeared individually, either (a) a principal challenge, which may be subdivided into (a) challenge *propter honoris respectum*, as if a lord of Parliament be called, he may challenge himself, or he may have his writ of privilege, but it is doubtful if either party can challenge him, 6 Geo. IV., c. 50, § 2; (b) challenge *propter defectum*, that the juror is not qualified, or if a woman be impanelled she may be challenged *propter defectum sexus*, unless it be on a writ *de ventre inspiciendo*; (c) challenge *propter affectum*, by reason of some supposed bias or partiality; (d) challenge *propter delictum*, when, for some act of the juror, he has ceased to be, in consideration of law, *probus et legalis homo*. (B) A challenge to the polls for favour is of the same nature with the principal challenge *propter affectum*, but of an inferior degree.

No challenge can be made before a full jury have appeared; a challenge to the polls is made *ore tenus*, that to the array in writing.

The trial of challenges to the array is entirely in the discretion of the court, sometimes they are tried by two of the coroners, sometimes by two of the jury, sometimes by the court itself. Challenges to the polls, if to the favour, are tried by two jurors, who have been sworn; if none sworn, the court

appoints two indifferent persons to try them, thence called triers, who are superseded as soon as two jurors are sworn: a principal challenge to the polls is tried by the court itself. *Chit. Arch. Prac.* 305.

In criminal cases, challenges may be made, either on the part of the crown, or on that of the prisoner, and either to the whole array, or to the separate polls, for the very same reasons that they may be made in civil causes. In capital cases, the prisoner, *in favorem vitæ*, is allowed an arbitrary and capricious species of challenge, without showing any cause at all, limited, in cases of treason, to thirty-five, and in felonies to twenty. 22 *Hen. VIII.*, c. 14; 7 & 8 *Geo. IV.*, c. 28, § 3.

CHAMBER, the place where certain assemblies are held; also the assemblies themselves.

CHAMBER OF COMMERCE, an assembly of merchants and traders, where affairs relating to trade are treated of. There are several establishments of this sort in most of the chief cities in France; and in this country, chambers of this kind have been established for various purposes.

CHAMBERDEKINS, or *Chamber-deacons*, certain poor Irish scholars, clothed in mean habit, and living under no rule; also beggars banished England, by 1 *Hen. V.*, cc. 7, 8.

CHAMBERLAIN, a person who has the management and direction of a chamber or chambers. It is variously used in our laws, statutes, and chronicles. Among the most important are:—*The Lord Chamberlain of Great Britain*, the sixth high officer of the Crown, to whom belongs the government of the palace at Westminster, and upon all solemn occasions, the keys of Westminster Hall, and the Court of Requests, are delivered to him; he disposes of the Sword of State, to be carried before the Queen when she comes to Parliament, and goes on the right hand side, next to the Queen's person; he has the care of providing all things in the House of Lords during its sessions; to him belong livery and lodgings in the Queen's courts, &c., and the gentleman usher of the black rod, yeoman usher, &c., are under his authority. The office is hereditary. 2. *The Lord Chamberlain of the Household*; he has the oversight and direction of all officers belonging to the Queen's chambers, except the precinct of the bed-chamber. 3. *The Chamberlain of London*, who keeps the city money, presides over the affairs of the citizens and their apprentices, and presents the freedom of the city to those who have faithfully served their apprenticeships.

CHAMBERS, rooms or apartments belonging to the Inns of Court.

CHAMBERS OF THE KING, [*Regiæ cameræ*], the havens and ports of the kingdom are so called in our ancient records. *Mare Claus. f.* 242.

CHAMBRE DEPEINTE, anciently St. Edward's Chamber, now called the Painted Chamber.

CHAMPART, field-rent; champerty.

CHAMPARTY, or **CHAMPERTY** [*campi partitio*, to divide the lands, &c.], properly a bargain between a plaintiff or defendant in a cause, *campum partire*, to divide the land or other matter sued for between them, if they prevail at law; whereupon the champertor is to carry on the party's suit or action at his own expense; or it is the purchasing the right of action, or suit of another person. It was chiefly upon this ground that the courts of common law refused to recognise the assignment of debts and other rights of action and securities; though the same doctrine obtains not in equity. Every champerty implies maintenance, but every maintenance is not champerty (2 *Inst.* 108). And courts of equity being ever solicitous to enforce all the principles of law respecting champerty and maintenance, they will not in any case uphold an assignment, which involves any such offensive ingredients. Thus, for instance, courts of equity, equally with courts of law, will repudiate any agreement or assignment made between a creditor and a third person, to maintain a suit of the former, so that they might share the profits resulting from the success of the suit; for it would be a clear case of champerty. *Story's Comm. vol. 2*, p. 289; *Story on Contracts*, § 208.

CHAMPERTORS, persons who move pleas or suits, or cause them to be moved, either by their own procurement or by others, and sue them at their proper costs; to have part of the land in variance, or part of the gain. 33 *Edw. I.*, c. 2.

CHAMPION [*campio*], a person who fights a combat in his own cause, or in the place or quarrel of another. *Bract. l. 3, tr. 2*, c. 21.

CHAMPION OF THE KING OR QUEEN [*campio regis*], an ancient officer, who rode, armed *cap-à-piè*, into Westminster Hall at the coronation, while the King was at dinner, and, by the proclamation of a herald, made a challenge, "that if any man shall deny the King's title to the Crown, he is there ready to defend it in single combat." Which being done, the King drank to him, and sent him a gilt cup covered, full of wine, which the champion drank, and retained the cup for his fee. This ceremony has been discontinued.

CHANCE, misfortune, accident, deficiency of will. Where a man commits an unlawful act by misfortune or chance, and not by design, his will observes a total neutrality, and does not co-operate with the deed, which therefore wants one main ingredient of a crime. If any accidental mischief happen to follow from the performance of a *lawful* act, the party stands excused from all guilt; but if a man be doing anything *unlawful*, and a consequence ensues which he did not foresee or intend, as the death of a man, or the like, his want of foresight shall be no excuse, for, being guilty of one offence, in doing antecedently what is in itself unlawful, he is

criminally guilty of whatever consequence may follow the first behaviour. 4 *Bl. Com.* 26.

But a very important distinction is made in such cases, *viz.*, whether the unlawful act is also in its original nature wrong and mischievous; for a person is not answerable for the incidental consequences of an unlawful act, which is merely a *malum prohibitum*; as, where any unfortunate accident happens from an unqualified person being in pursuit of game, he is amenable only to the same extent as a man duly qualified. *Fost.* 259; 1 *Hale's P. C.* 475.

CHANCELLOR, THE LORD HIGH [*cancellando*, Lat., cancelling], the highest judicial character in the kingdom, and superior, in point of precedency, to every temporal lord. He is created by the delivery of the Queen's great seal into his custody. He is a cabinet minister, and the continuance of his office depends upon the ministry of the day. He is a privy counsellor and prolocutor of the House of Lords by prescription. To him belongs the appointment of all justices of the peace throughout the kingdom. Being, in the earlier periods of our history, usually an ecclesiastic (for none else were then capable of an office so conversant in writings), and presiding over the royal chapel, he became keeper of the Sovereign's conscience; visitor, in right of the Crown, of all hospitals and colleges of royal foundation, and patron of all the Crown livings under the value of twenty marks *per annum* in the King's books. He is the general guardian of all infants, idiots, and lunatics, and has the general superintendence of all charitable uses in the kingdom. And all this, over and above the vast and extensive jurisdiction which he exercises in his judicial capacity in the High Court of Chancery. 3 *Bl. Com.* 47. His retiring pension is 5000*l.* *per annum*. 2 & 3 *Wm. IV.*, c. 111. There is also a Lord High Chancellor of Ireland.

CHANCELLOR OF A CATHEDRAL, an officer who hears lessons in the church, inspects schools, hears causes, writes letters, applies the seal of chapter, keeps books, &c. *Mon. Angl.*, tom. 3, pp. 24, 339.

CHANCELLOR OF A DIOCESE, or, OF A BISHOP, a law officer, appointed to hold the Bishop's Court in his diocese, and to adjudicate upon matters of ecclesiastical law. He must be a Doctor of Civil Law, as created in some university. 87 *Hen. VIII.*, c. 17.

CHANCELLOR OF THE DUCHY OF LANCASTER, an officer before whom, or his deputy, the Court of the Duchy Chamber of Lancaster is held. This is a special jurisdiction concerning all matters of equity relating to lands held of the Crown in right of the Duchy of Lancaster; which is a thing very distinct from the county palatine (which has also its separate Chancery for sealing of writs or the like), and comprises much territory lying at a vast distance from it, as particularly a very large district surrounded

by the city of Westminster. The proceedings in this court are the same as in the High Court of Chancery; so that it seems not to be a court of record, and indeed it has been holden that the Court of Chancery has a concurrent jurisdiction with the Duchy Court, and may take cognizance of the same causes.

This Court is held in Westminster-Hall, and was formerly much used. 3 *Bl. Com.* 78.

CHANCELLOR OF THE EXCHEQUER, an officer who presides in that court, and takes care of the interests of the Crown. He has power with the Lord Treasurer to lease the Crown lands, and to compound for forfeiture of lands on penal statutes, bonds, and recognizances, entered into to the Queen: he has also great authority in managing the royal revenues, and in all matters relating to the finance of the State. 25 *Hen. VIII.*, c. 16; 33 *Hen. VIII.*, c. 39.

CHANCELLOR OF THE ORDER OF THE GARTER, and other military orders, an officer who seals the commissions and the mandates of the chapter and assembly of the knights; keeps the register of their proceedings, and delivers their acts under the seal of their order. *Stow's Annals*, 706.

CHANCELLOR OF THE UNIVERSITIES, an officer who seals the diplomas or letters of degree, &c. He is selected from the prime nobility at Oxford; it is held for life; at Cambridge he is elected every three years.

The Chancellors' Courts in the two Universities enjoy the sole jurisdiction, in exclusion of the Queen's Courts, over all civil actions and suits whatsoever, excepting where a right of freehold is concerned, and of all injuries and trespasses against the peace; mayhem and felony excepted, (*Brown v. Renouard*, 12 East, 13; *Thornton v. Ford*, 13 East, 635,) when a scholar or privileged person is one of the parties, and these by the University charter, they are at liberty to try and determine, either according to the common law of the land, or according to their own local customs, at their discretion. They carry on their processes in a course much conformed to the civil law.

The Judge of the Chancellor's Court at Oxford is the Vice Chancellor, his deputy or assessor. From his sentence an appeal lies to delegates appointed by the congregation; from thence to other delegates of the house of convocation; and if they all three concur in the same sentence, it is final, at least by the statutes of the University, according to the rule of the civil law. *Cod.* 7, 70, 1. But if there be any discordance or variation in any of the three sentences, an appeal lies in the last resort to Judges delegates appointed by the crown under the Great Seal in Chancery. 3 *Bl. Com.* 84.

CHANCE-MEDLEY [*chance*, Fr., lapsus, and *mêler*, miscere], a casual affray. Such killing of a man as happens either in self-defence on a sudden quarrel, or in the commission of an unlawful act, without any deliberate intention

of doing any mischief at all. 1 *Hawk. P. C.*, c. 30, § 1. It is sometimes termed *chaud-medley*, which more properly signifies an affray in the *heat* of blood or passion.

It is frequently difficult to distinguish this species of homicide, upon chance-medley in self-defence, from that of manslaughter in the proper legal sense of the word. But the true criterion between them seems to be this, when both parties actually combating at the time when the mortal stroke is given, the slayer is then guilty of manslaughter; but if the slayer has not begun to fight, or, having begun, endeavours to decline any further struggle, and afterwards, being closely pressed by his antagonist, kills him to avoid his own destruction, this is homicide, excusable by self-defence. For which reason the law requires, that the person who kills another in his own defence, should have retreated as far as he conveniently or safely can to avoid the violence of the assault before he turns upon his assailant, and that not fictitiously, or in order to watch his opportunity, but from a real tenderness of shedding another's blood. The civil law, in this respect, goes further than ours,—“*qui cum aliter tueri se non possunt, damni culpam dederint, innoxii sunt*. (Those who, when they cannot otherwise defend themselves, destroy their assailants, are innocent.) 4 *Bl. Com.* 184.

CHANCERY, the highest Court of judicature in this kingdom next to the Parliament.

There are five Superior Courts of Chancery, the first of which is the High Court of Chancery, presided over by the Lord High Chancellor of Great Britain. It has four different jurisdictions, as follow:—

The ordinary or legal jurisdiction, (sometimes called the Petty Bag side of Chancery, so named because the proceedings were kept in a little bag or sack, *in parvâ bagâ*;) is a court of common law and a court of record, whose proceedings are according to the common and statute law. In this Court the Lord Chancellor has jurisdiction to hold pleas of *scire facias* to repeal the Queen's letters' patent, when made against law or upon untrue suggestions, at the suit of an original patentee, and to hold plea of petitions, *monstrans de droit*, traversers of offices, and the like. In this ordinary or legal court is also kept the *officina justitiæ*, out of which all original writs that pass under the Great Seal are issued; as for instance, the writ of error at common law. The Lord Chancellor nominates and appoints the officers of the Court. *Vide Madd. Chan.*, book 1, as to this jurisdiction.

The extraordinary or equity jurisdiction, see **EQUITY**.

The next is the statutory jurisdiction, under which are comprehended the Lord Chancellor's powers under the celebrated *Habeas Corpus Act*, 31 *Car. 2*, c. 2, but the Superior Courts of Common Law at Westminster having concurrent jurisdiction in granting the writ, it is most usual, in

practice, to apply to one of these latter courts. Also his authority to enquire into any abuses of charitable donations, by virtue of the 43 *Eliz. c. 4*. Arbitrations. If the parties agreeing to submit their differences to arbitration, desire to make such submission a rule of the Court of Chancery, it must be so inserted in the submission, which must be in writing. The application to make it a rule of the Court, may be by motion on notice, supported by an affidavit of the agreement, or on an *ex parte* motion, if the agreement give liberty to apply, without notice, or by consent on production of a consent brief. It must be observed, that the Court, in its equitable jurisdiction, is not a Court of record, but it is in its common law jurisdiction; the application to the Lord Chancellor under 9 & 10 *W. 3*, c. 15, § 2, must, therefore, be to make it a rule of the ordinary side of the Court. This application does not relate to causes depending, since the statute extends not to awards made on references in causes depending. Awards are enforced by personally serving the party to perform it, with a copy of the ordering part of the award, and demanding its performance, which being refused, other orders are obtained upon an affidavit of service, and ultimately the party is committed. An award may be set aside either in the way of exceptions, or by motion to set aside the award, or by filing a bill to impeach it. The grounds for setting aside an award are,—the arbitrators awarding what was not in their power, something contrary to law, or for corruption, or that they have acted contrary to the principles of natural justice, or upon mere mistake as admitted by themselves, otherwise, although the mistake be palpable, the Court, it seems, cannot relieve; but, perhaps, the Court would not enforce an award by attachment, in case of evident mistake or illegality apparent on the face of the award. *Vide Watson on Awards; Chit. Arch. Prac*, title *Arbitration*. The Lord Chancellor derives his jurisdiction in bankruptcy from the legislature.

The fourth jurisdiction is the specially delegated jurisdiction, by virtue of which the Lord Chancellor has authority over idiots and lunatics.

The second court is that of the Master of the Rolls, (who is assistant to the Lord Chancellor when present, and his deputy when absent), the extent of whose jurisdiction was settled by the 3 *G. 2*, c. 30; and the 3 & 4 *Wm. 4*, c. 94, requires him to hear motions, pleas, and demurrers, as well as causes.

The third is the Court of the Vice Chancellor of England, created by the 53 *G. 3*, c. 24, with power to hear and determine all causes, matters, and things, depending in the Court of Chancery, either as a Court of law or equity, or incident to any ministerial office of the Court, or submitted to the jurisdiction of the Court or the Lord Chancellor, by act of Parliament. But it is ex-

pressly provided, that the Vice Chancellor shall not have power to reverse or alter any decree, &c., made by the Lord Chancellor, &c., unless authorised so to do by the Lord Chancellor, nor to reverse any decree or order of the Master of the Rolls.

The 5 Vict., c. 5, having abolished the equity side of the Court of Exchequer, and transferred its jurisdiction to the Court of Chancery, whereby an increase of business was occasioned, two additional Vice Chancellors were appointed, with power to her Majesty to supply a vacancy in the office of the Vice Chancellor, first appointed under this act, but not to appoint a successor to the second appointment. Their powers are precisely similar to those of the Vice Chancellor of England.

The other equitable Courts in England, are the Counties Palatine, the Courts of the Universities of Oxford and Cambridge, the Courts of the City of London and of the Cinque Ports, over which the Superior Courts have a controlling power.

CHANGER, or CHAUNGER, an officer belonging to the mint, who exchanges coin for bullion brought in by merchants or others. 6 Hen. II., c. 12.

CHANTRY, or CHAUNTRY [*cantaria*], a little church, chapel, or particular altar, in some cathedral church, &c., endowed with lands, or other revenues, for the maintenance of one or more priests, daily to sing mass, and officiate divine service for the souls of the donors and such others as they appointed. See 1 Edw. VI., c. 14, abolishing them.

CHAPEL [*capella, chapelle*], a building either adjoining to a church, for performing divine service, or separate from the mother church, where the parish is large, and then called a *chapel of ease*, for the accommodation of those parishioners who dwell at a distance from the parish church. These may be parochial, and have a right to sacraments and burials, and to a distinct minister, by custom, though subject, in some respects, to the mother church. The *chapels in the Universities*, belonging to the different halls and colleges, though consecrated, and sacraments are administered there, yet they are not liable to the visitation of the bishop, but of the founder. 2 Inst. 363.

CHAPELRY, the precincts and limits of a chapel.

CHAPERON, a hood or bonnet anciently worn by the knights of the garter, as part of the habit of that noble order; also a little escutcheon fixed in the forehead of the horses, that draw a hearse at a funeral.

CHAPITRES [*capitula*, Lat., chapters of a book], a summary of such matters as are to be enquired of or presented before justices in eyre, justices of assize, or the peace, in their sessions. Also articles delivered by the justice in his charge to the inquest. Britton, c. 3,

CHAPLAIN [*capellanus*], an ecclesiastic who performs divine service in a chapel; but it more commonly means one who attends

upon a king, prince, or other person of quality, for the performance of clerical duties in a private chapel. 4 Rep. 90.

CHAPMAN [*ceapman*, Sax.], a cheapner, one that offers as a purchaser.

CHAPTER [*capitulum*], a congregation of persons in a cathedral church, consisting of ecclesiastics, canons, or prebendaries, whereof the dean is the head, all subordinate to the bishop, to whom they are as assistants in matters relating to the church, for the better ordering and disposing the things thereof, and the confirmation of such leases of the temporality and offices relating to the bishoprick, as the bishop shall make from time to time. And they are termed *capitulum*, as a kind of head, instituted not only to assist the bishop in manner aforeaid, but also anciently to rule and govern the diocese in the time of vacation. Burn's Dict.

CHARGE, the instructions given by a Judge to a grand jury; also the taking proceedings against a prisoner.

CHARGE and DISCHARGE, a mode of taking accounts in the Master's office in Chancery. If the party prosecuting the order is satisfied with the account, he carries into the Master's office a charge, which is merely a transcript of the receipts admitted by the accounts, together with any items with which the accounting party may be sought to be charged. A warrant "on leaving," and also another "to proceed" are then taken out and served on all parties interested in the account, and on the return thereof, the charge is compared with the affidavit, and, if correct, is allowed without further evidence. If the charge include sums not admitted in the account, they must either be substantiated by evidence or by the examination of the accounting party. If the account contain receipts of both real and personal property, two separate charges are carried in.

When the charge has been allowed, the other party carries in his discharge, which is a transcript of the payments sworn to in his affidavit on examination. Warrants on leaving and to proceed are then taken out and served on the opposite parties; and at the return thereof, the discharge is first examined with the affidavit or examination of the accounting party, who then proceeds to vouch his payments, by producing the receipts for them, and which should be carefully arranged in the order in which they are placed in the discharge. In proceeding on the discharge, it is not necessary to produce receipts for sums under 40s., the oath of the party being considered sufficient as to them.

CHARITABLE USES. By the 9 Geo. II., c. 36, it is enacted that no lands or tenements, or money to be laid out thereon, shall be given for or charged with any *charitable* uses whatsoever, unless by deed indented, executed in the presence of two witnesses, twelve calendar months before the donor's

death, and enrolled in the Court of Chancery within six months after its execution, (except stock in the public funds, which may be transferred within six months previous to the donor's death,) and unless such gift be made to take effect immediately, and be without power of revocation, and that all other gifts shall be void. The following property, therefore, cannot be devised for charitable purposes:—

1. Land, whether freehold, copyhold, or leasehold.
2. Money charged upon or arising from such property.
3. Money to be laid out in the purchase of such property, or in paying off any incumbrances thereon, or to be invested by way of mortgage upon such property.
4. Dock, canal, or railway shares, tolls or dues, and turnpike tolls or bonds.
5. Money due upon mortgage of the preceding, or upon poor-rates, church-rates, county-rates, or any assessment.
6. Rents or other profits arising upon all the foregoing species of property.

The two Universities, their colleges, and the scholars upon the foundation of the colleges of Eton, Winchester, and Westminster, are excepted out of this act, but such exemption was granted with this proviso, that no college shall be at liberty to purchase more advowsons than are equal in number to one moiety of the fellows or students upon the respective foundations; but this part of the statute is repealed by 45 Geo. III., c. 101, so that these colleges may now hold any number of advowsons. 2 *Bl. Com.* 274. The like favour has been extended to the British Museum, by 5 Geo IV., c. 39, § 3.

CHARITIES. It is highly probable that the rudiments of the law of charities were derived from the Roman or civil law. One of the earliest fruits of the Emperor Constantine's zeal, or pretended zeal for christianity, was a permission to his subjects to bequeath their property to the church. This permission was soon abused to so great a degree as to induce the Emperor Valentinian to enact a mortmain act by which it was restrained. But this restraint was gradually relaxed; and in the time of Justinian, it became a fixed maxim of Roman jurisprudence, that legacies to pious uses, (which included all legacies destined to works of charity, whether they related to spiritual or temporal concerns,) were entitled to peculiar favour, and to be deemed privileged testaments.

The high authority of the Roman law, coinciding with the religious notions of the times, could hardly fail to introduce these principles of pious legacies into our common law; and the zeal and learning of the ecclesiastical tribunals must have been constantly exercised to enlarge their operation. Lord Thurlow was clearly of opinion that the doctrine of charities grew up from the civil law; and Lord Eldon, in assenting to that opinion, has judiciously remarked, that, at an early period, the ordinary had the

power to apply a portion of every man's personal estate to charity; and when afterwards the statute compelled a distribution, it is not impossible that the same favour should have been extended to charity in wills, which, by their own force, purported to authorise such a distribution.

The history of the law of charities prior to the 43d Eliz., c. 3, which is emphatically called the Statute of Charitable Uses, is extremely obscure. This statute provided a new mode of enforcing charitable uses by a commission from the Court of Chancery.

Charity (as Sir William Grant has justly observed) in its widest sense, denotes all the good affections men ought to bear towards each other; in its more restricted and common sense, relief to the poor. In neither of these senses is it employed in the Court of Chancery. In that court it means such charitable bequests only as are within the letter and the spirit of the statute of Elizabeth. The charities enumerated in the preamble of the statute are gifts, devises, &c., for the relief of aged, impotent, and poor people; for maintenance of sick and maimed soldiers and mariners; for schools of learning, free-schools, and scholars of universities; for repairs of bridges, ports, havens, causeways, churches, sea-banks, and highways; for education and preferment of orphans; for or towards the relief, stock, or maintenance of houses of correction; for marriages of poor maids; for supportation, aid, and help of young tradesmen, handicraftsmen, and persons decayed; for relief or redemption of prisoners or captives; and for aid or ease of any poor inhabitants, concerning payments of fifteenths, setting out of soldiers, and other taxes.

It is clear that no superstitious uses are within the purview of the statute; such as are gifts of money for the finding or maintenance of a stipendiary priest; or for the maintenance of an anniversary or obit; or of any light or lamp in any church or chapel; or for prayers for the dead; or for such purposes as the superior of a convent, or her successor, may judge expedient. But there are certain uses which, though not within the letter, are yet deemed charitable within the equity of the statute. Such is money given to maintain a preaching minister; to maintain a school-master in a parish; for the setting up a hospital for the relief of poor people; for the building of a sessions house for a city or county; for the making of a new, or for the repairing of an old pulpit in a church; or for the buying of a pulpit cushion, or pulpit cloth; or for the setting of new bells where there are none, or for mending of them when they are out of repair.

Upon the whole, it seems to be the better opinion, that the jurisdiction of the Court of Chancery over charities, where no trust is interposed, or where there is no person *esse* capable of taking, or where the charity is of an indefinite nature, is not to be referred to the general jurisdiction of that court, but

sprung up after the statute of Elizabeth, and rests mainly on its provisions.

The jurisdiction exercised by the Lord Chancellor, under the 43 *Eliz.*, c. 4, over charities, is held to be personal in him, and not exercised in virtue of his ordinary or extraordinary jurisdiction in Chancery; and in this respect it resembles the jurisdiction exercised by him in cases of idiots and lunatics, which is exercised purely as the personal delegate of the Crown, which has a right to guard and enforce all charities of a public nature, by virtue of its general superintending power over the public interests, where no other person is entrusted with that right.

But as the Court of Chancery may also proceed in many, although not in all, cases of charity by original bill, as well as by commission under the statute of Elizabeth, the jurisdiction has become mixed in practice, that is to say, the jurisdiction of bringing informations in the name of the Attorney General has been mixed with the jurisdiction given to the Chancellor by the statute. So that it is not always easy to ascertain in what case he acts as a Judge, administering the common duties of a Court of Equity, and in what cases he acts as a mere delegate of the Crown, administering its peculiar duties and prerogatives. And again, there is a distinction between cases of charity, where the Chancellor is to act in the Court of Chancery, and cases where the charity is to be administered by the Queen, under her sign manual. Lord Eldon, after a full review of all the cases, came to the conclusion (which is now the settled rule), that where there is a general indefinite purpose of charity, not fixing itself upon any particular object, the disposition and administration of it are in the Queen by her sign manual. But where the gift is to trustees with general objects, or with some particular objects pointed out, there the Court of Chancery will take upon itself the administration of the charity, and execute it under a scheme to be reported by a master. *Moggridge v. Thackwell*, 7 Ves. 36—86; *Story's Equity Jurisp.* c. xxxi; *Shelford's Law of Charities*.

Charta de non ente non valet. Co. Lit. 36.—(A charter concerning a thing not in existence avails not.)

Charta est legatus mentis. Ibid.—(A charter is a legate of the mind.)

Charta non est nisi vestimentum donationis. Ibid.—(A charter is nothing else than the vestment of a gift.)

Chartarum super fidem, mortuis testibus, ad patriam de necessitudine, recurrendum est. Ibid.—(The witnesses being dead, it must be referred, as to the truth of charters, out of necessity, to the country, i. e., a jury.)

CHARTE, a cart, chart, or plan, which mariners use at sea. 14 *Car. II.*, c. 33.

CHARTEL [*cartel*, Fr.], a letter of defiance, or challenge to a single combat; also, an instrument or writing between two states for settling the exchange of prisoners of war.

CHARTER [*charta*, Lat., *chartres*, Fr.], an evidence of things done between man and man; also, a statute or act of Parliament. *Charters of the Queen* are written instruments granting certain privileges or exemptions to towns, corporations, bodies politic. *Charter of pardon*, forgiving a felony or other offence committed against the Crown and its dignity. *Charter of the forest* comprises the laws of the forest. *Fleta*, l. 3, c. 14; *Co. Litt.* 6.

CHARTER-LAND, otherwise called *book-land*, property held by deed under certain rents and free-services, and in effect, differs nothing from the free-socage lands, and hence have arisen most of the freehold tenants, who hold of particular manors, and owe suit and service to the same. 2 *Bl. Com.* 90.

CHARTERER, a person who charters or hires a ship for a voyage; also a Cheshire freeholder. *Sir P. Ley's Antiq. f.* 356.

CHARTER PARTY [*charta partita*, Lat., *chartre parti*, Fr.], a deed or writing divided, or pair of indentures among merchants or sea-faring men, containing the covenants and agreements made between them, touching their merchandize and maritime affairs. A charty-party of affreightment settles agreements as to the cargo of ships, and binds the master to deliver the cargo in good condition, at the place of discharge or consignment according to agreement (dangers of the sea excepted); and sometimes the owner or master binds himself, ship, tackle, and furniture, for due performance. It is distinguished from a bill of lading, in that it states the terms and conditions of the freight or carriage, whereas a bill of lading merely ascertains the contents of the cargo. 2 *Inst.* 673; *Abbott on Shipping*, p. 3, c. 1.

Charters sont appell "muniments," à "muniendo," quia muniunt et defendunt hæreditatem. 4 Co. 153.—(Charters are called *muniments*, from *muniendo*, because they fortify and defend the inheritance.)

CHARTIS REDDENDIS, an ancient writ which lay against one who had charters of feoffment entrusted to his keeping, and refused to deliver them. *Reg. Orig.* 159.

CHASE [*chasse*, Fr.], a privileged place for the preservation of deer and beasts of the forest, and is of a middle nature between a forest and a park. It is commonly less than a forest, and not endowed with so many liberties, as officers, laws, courts; and yet is of larger compass than a park, having more officers and game than a park. Every forest is a chase, but every chase is not a forest. It differs from a park in that it is not enclosed, yet it must have certain metes and bounds, but it may be in other men's grounds as well as in one's own. *Mainw.* 49.

The beasts of chase are properly buck, doe, fox, martin, and roe; but in a common and legal sense, extend likewise to all the beasts of the forest; which, besides the others, are reckoned to be hart, hind, hare, boar, and wolf; and, in a word, all wild beasts of venery and hunting. *Co. Litt.* 233.

CHATTELS, or CATALS [*catalla*, Lat., the

derivationis uncertain], goods moveable and immoveable, except such as are in the nature of freehold or parcel of it. They are either (1) *personal*, which belong immediately to the person of a man, and for which, if they are injuriously withheld from him, he has no other remedy than by a personal action; (2) *real*, which either appertain not immediately to the person, but to some other thing by way of dependency, as a box with writings of land; or issue out of some immoveable thing, as a lease, or rent for a term of years; and they concern the realty, lands and tenements; interest in advowsons, in statutes merchant, and the like. 1 *Inst.* 118.

CHAUD-MEDLEY. See **CHANCE-MEDLEY.**

CHAUMPERT, an ancient tenure. *Blount.*

CHAUNTRY-RENTS, money paid to the Crown by the servants or purchasers of chauntry-lands. 22 *Car. II.*, c. 6.

CHEATS, deceitful practices, in defrauding or endeavouring to defraud another of his known right, by means of some artful device, contrary to the plain rules of common honesty; as by playing with false dice, by causing an illiterate person to execute a deed to his prejudice, or reading it over to him in words different from those in which it was written; selling one commodity for another, or using false weights and measures, and the like. 1 *Hawk.* 188.

CHECKS, CHEQUES, or DRAFTS, orders addressed to some person, generally a banker, directing him to pay the sum specified in the check to the person named in it, or bearer, on demand. In point of form, they nearly resemble bills of exchange, except that they are uniformly payable to bearer, and should be drawn upon a regular banker, though this is not essential. They are assignable by delivery only, and are payable instantly on presentment, without any days of grace being allowed. If a check upon a banker be lodged with another banker, a presentment by the latter at the clearing-house is sufficient. Checks are usually taken conditionally for cash; for unless an express stipulation be made to the contrary, if they be presented in due time and not paid, they are not a payment. Checks drawn on bankers residing ten miles or more from the place where they are drawn, must be on a stamp of the same value as a bill of exchange of an equal amount; but checks drawn on a banker, acting as such within ten miles of the place where they are issued, may be on plain paper. *Chitty's Comm. Law*, v. iii. 591.

CHECK-ROLL, a list or book, containing the names of such as are attendants on, or in pay to, the Queen or other great personages, as their household servants. 19 *Car. II.*, c. 1.

CHESTER, a county of England, which was declared to be no longer a county palatine by 1 *Wm. IV.*, c. 70, § 13.

CHEVAGE, or CHERAGE [*chef*, Fr.], a tribute or sum of money formerly paid by such as held land in villenage to their lords in acknowledgment, and was a kind of head or poll-money. *Bract.* l. 1, c. 10.

CHEVANTIA [*chavance*, Fr.], a loan or advance of money upon credit; also goods, stock, &c. *Mon. Ang. t. 1*, p. 629.

CHEVISANCE [*chevir*, i. e., *venir à chef de quelque chose*, Fr.], to come to the end of a business], an agreement or composition; an end or order set down between a creditor or debtor; an indirect gain in point of usury, &c.; also an unlawful bargain or contract.

CHIEF BARON OF THE EXCHEQUER, the presiding Judge in the Court of Exchequer of Pleas at Westminster, with whom four *puisné* Judges are associated for the administration of justice.

CHIEF JUSTICE OF THE COMMON PLEAS, the presiding Judge in the Court of Common Pleas at Westminster. He has four *puisné* Judges associated with him.

CHIEF JUSTICE, *the Lord*, the presiding Judge in the Court of Queen's Bench at Westminster, with whom four *puisné* Judges are associated. These Judges are by their office the sovereign conservators of the peace, and supreme coroners of the land.

CHIEF-RENTS [*reditus capitales*, Lat.], the annual payments of freeholders of manors; also denominated quit rents (*quieti reditus*), because thereby the tenant goes free of all other services. 2 *Bl. Com.* 42.

CHIEF, tenants in, persons who held their lands immediately under the King (*in capite*) in right of his Crown and dignity.

CHIEFRIE, a small rent paid to the lord paramount.

CHIEVANCE, usury.

CHILDBEARING. It is generally conceded that no female can be impregnated, in our own climate, under the age of thirteen, nor above that of fifty, provided that she have been previously barren. This, however, is only to be taken as a general rule, subject to exceptions. See *Capuron*, pp. 93, 98. The question at what age pregnancy is possible, and beyond which it cannot occur, has been much canvassed. As to premature pregnancy in European countries, the most astonishing instance, probably, is given by Meyer, of a Swiss girl becoming a mother at nine years of age. The English law admits of no presumption as to the time when a woman ceases to have children, though this enters into most other codes. *Beck's Med. Jurisp.* 148, 402.

CHILDWIT, a fine or penalty of a bondwoman unlawfully begotten with child. *Cowel.*

CHILTERN-HUNDREDS, a range of chalky hills on the borders of Bedfordshire and Buckinghamshire, belonging to the Crown, and having the office of Steward attached to them. It being an established rule that a member of Parliament receiving a place under the Crown cannot sit, unless re-elected, the acceptance of a Stewardship of the Chiltern-hundreds is the formal manner of resigning a seat.

CHIMIN [*via*, Lat.], a way, which is either the Queen's highway (*chiminus regius*), or a private way: the first is that over which the subjects of this realm, and all others under

the protection of the Crown, have free liberty to pass, though the property in the soil itself belong to some private individual; the last is that in which one person or more have liberty to pass over the ground of another, by prescription or charter. This is divided into *chimin in gross*, where a person holds a way principally and solely in itself, and *chimin appendant*, where a person has it as appurtenant to some other thing; as if he rent a close or pasture, with covenant for ingress and egress through and over other ground, over which otherwise he might not pass. *Kitch.* 117; *Co. Litt.* 56.

CHIMINAGE, or *pedagium*, toll due by custom for having a way through a forest. *Co. Litt.* 56.

CHIMNEY-MONEY, or *hearth-money*, a crown duty for every fire-place in a house. 14 *Car. II.*, c. 2. Repealed.

CHIPP, CHEAP, CHIPPING, signify the place to be a market-town, as Chippingham, &c. *Blount.*

CHIPPINGAVEL, or CHEAPINGAVEL, toll for buying and selling.

CHIRCHGEMOT, CHIRGEMOT, KIRK-MOTE [*forum ecclesiasticum*], a synod, a meeting in a church or vestry. *Blount.*

CHIROGRAPH [*χῆρ*, Gk., a hand, and *γράφω*, to write], a deed or other public instrument in writing, which anciently was attested by the subscription and crosses of witnesses; afterwards, to prevent frauds and concealment, people made their deeds of mutual covenant in a script and rescript, or in a part and counterpart, and in the middle between the two copies, they drew the capital letters of the alphabet, and then tallied or cut asunder, in an *indented* manner, the sheet or skin of parchment; which, being delivered to the two parties concerned, were proved authentic by matching with and answering one another. Deeds thus made were denominated *syngrapha* by the canonists, and with us *chirographa*, or handwritings. Chirograph was also used for a fine, the manner of engrossing which and cutting the parchment into two pieces, was observed in the chirographer's office of the Court of Common Pleas, until those assurances by matter of record were abolished by the 3 & 4 Wm. IV., c. 74. 2 *Bl. Com.* 296; 2 *Inst.* 468; *Kenn. Antiq.* 177; *Mon. Ang.*, t. 2, p. 94.

Chirographum apud debitorem repertum præsumitur solutum. (A deed or bond found with the debtor is presumed to be paid.)

CHIRURGEON, the ancient denomination of a surgeon.

CHIVALRY [*chevalier*, Fr., a knight], a military dignity, supposed by some to have taken its rise soon after the death of Charlemagne, and by others as arising out of the crusades, because in these expeditions many chivalrous exploits were performed, and a proud feeling of heroism engendered. In describing the origin, object, and character of this military institution, Gibbon the historian, thus alludes to a successful candidate for the honour of

knighthood, and eulogises the institution: "He was created a Knight in the name of God, of St. George, and of St. Michael the Archangel. He swore to accomplish the duties of his profession and education; example, and the public opinion, were the inviolable guardians of his oath. As the champion of God and the ladies, he devoted himself to speak the truth; to maintain the right; to protect the distressed; to practice courtesy, (a virtue less familiar to the infidels); to despise the allurements of ease and safety; and to vindicate in every perilous adventure the honour of his character. The abuse of the same spirit provoked the illiterate knight to disdain the arts of luxury and peace; to esteem himself the sole judge and avenger of his own injuries; and proudly to neglect the laws of civil society and military discipline. Yet the benefits of this institution to refine the temper of barbarians, and to infuse some principles of faith, justice, and humanity, were strongly felt and have been often observed. The asperity of national prejudice was softened; and the community of religion and arms spread a similar colour and generous emulation over the face of Christendom. Abroad in enterprise and pilgrimage, at home in martial exercises, the warriors of every country were perpetually associated; and impartial taste must prefer a Gothic tournament to the Olympic games of classic antiquity. Instead of the naked spectacles which corrupted the manners of the Greeks and banished from the *stadium* the virgins and matrons; the pompous decoration of the lists was crowned with the presence of chaste and high born beauty, from whose hands the conqueror received the prize of his dexterity and courage." See **TENURE.**

CHIVALRY *court of*, anciently held as a court of honour merely, before the earl-marshal, and a criminal court before the Lord High Constable, jointly with the earl-marshal. It had cognizance of contracts, and other matters touching deeds of arms or war, also correcting encroachments in matters of coat-armour, precedency, and other distinctions of families, as well as pleas of life or member. It is now grown entirely out of use, on account of the feebleness of its jurisdiction and want of power to enforce its judgments, as it could neither fine nor imprison, not being a court of record. 3 *Bl. Com.* 68.

CHIVALRY *guardian in.* See **TENURE.**

CHOP-CHURCH [*ecclesiarum permutatio*, Lat.], changing benefices. 9 Hen. VI., c. 95.

CHOSE [Fr., a thing], it is used in divers senses, of which the four following are the most important:—

1. *Chose local*, a thing annexed to a place, as a mill, &c.
2. *Chose transitory*, that which is moveable, and may be taken away, or carried from place to place.
3. *Chose in action*, otherwise called *chose in*

suspense, a thing of which a man has not the possession or actual enjoyment, but has a right to demand it by action or other proceeding. It is rather in *potentia*, than in *esse*, as a debt, bond, &c. A well known rule of the common law is, that no possibility, right, title, or thing in action, can be granted to third parties; for it was thought that a different rule would be the occasion of multiplying litigation, as it would in effect be transferring a lawsuit to a mere stranger. At law, therefore, with the exception of negotiable instruments, an *interesse termini*, and some few other securities, this still continues to be the general rule, unless the debtor assents to the transfer; if he assent, then the right of the assignee is complete at law, so that he might maintain a direct action against the debtor, upon the implied promise to pay him the same, which results from such assent. When, therefore, in common acceptation, a debt or bond is said to be assigned over, it must still be sued, (i. e., at law,) in the original creditor's name; the person to whom it is transferred being rather an attorney than an assignee, unless, as we have seen, the debtor assents to such transfer.

Courts of Equity, however, have long since totally disregarded this nicety. They accordingly give effect to assignments of trusts, and possibilities of trusts, and contingent interests, whether they are in real or personal estates, as well as to assignments of *choses in action*, such equitable transfer being in the nature of an agreement, of which the Court of Chancery directs the performance. *Co. Litt.* 214 a; 2 *Bl. Com.* 442; 2 *Sanders on Uses*, 40; 2 *Story's Eq. Jurisp.* 278; *Watkin's Conv.* 36.

4. *Choses in possession*, where a person has not only the right to enjoy, but also the actual enjoyment of the thing.

CHRISMATIS DENARI, *chrisom pence*, paid to the diocesan or his suffragan, by the parochial clergy about Easter. It is otherwise called *quadragesimals*, or *paschals*, or *Easter-pence*. Obsolete.

CHRISTIAN-NAME, the name given at the font, distinct from the gentilitious name, or surname.

CHRISTIANITY, the religion of christians, who derived their name from the founder Christ (the anointed), and were first so designated at Antioch, in Syria. It is part of the law of England, and all offences against it are punished by fine and imprisonment. 4 *Stephen's Comm.* 234.

CHRISTMAS-DAY, a festival of the christian church, observed on the 25th of December, in memory of the birth of Jesus Christ. As to its antiquity, the first traces we find of it are in the second century, about the time of the Emperor Commodus. The decretal epistles, indeed, carry it up a little higher, and say, that Telesphorus, who lived in the reign of Antonius Pius, ordered divine service

to be celebrated, and an angelical hymn to be sung the night before the nativity. It is one of the usual quarter days for the payment of rent and salaries; it is also a *dies non juridicus*.

CHURCH [*Kerch*, Dut., *Kerche*, high Ger., *Kyrichia*, Su., *chirich*, Teut., *cyric circe*, Sax., of *κυριαχ*, Gk., scil., *οικία*. i. e., the Lord's house], used in several senses:—1. The collective body of persons professing one and the same religion; or the religion itself; thus we say, the church of Christ. 2. Any particular congregation of christians associating, as the church of Antioch. 3. A particular sect of christians, as the Greek church, or the church of England. 4. The body of ecclesiastics, in contradistinction to the laity. 5. The building in which a congregation of christians assemble. As to church authorities, &c., consult 3 *Stephen's Com.* 54.

CHURCH-BUILDING ACTS, for the purpose of extending the accommodation afforded by the national church, so as to make it more commensurate with the wants of the people, the following statutes have been passed:—58 Geo. III., c. 45; 59 Geo. III., c. 134; 3 Geo. IV., c. 72; 5 Geo. IV., c. 103; 7 & 8 Geo. IV., c. 72; 1 & 2 Wm. IV., c. 38; 2 & 3 Wm. IV., c. 61; 7 Wm. IV., and 1 Vict., c. 75; 1 & 2 Vict., c. 107; 3 & 4 Vict., c. 60; these are known by the denomination of the Acts for Church Building.

CHURCH-RATES, tributes, by which the expences of the church are to be defrayed; which rates are to be made by the parishioners at large, that is, by the majority of those that are present at a vestry to be summoned for that purpose by the church-wardens; and when made are recoverable in the ecclesiastical court, or (if the arrears do not exceed 10*l.*, and no question be raised as to the legal liability,) before two justices of the peace. 4 & 5 Vict., c. 36; 3 *Stephen's Com.* 91.

CHURCH-SCOT, customary obligations paid to the parish priest; from which duties the religious sometimes purchased an exemption for themselves and their tenants.

CHURCH - WARDENS, anciently styled *Church-Reeves*, or *Ecclesiæ Guardiani*, the guardians or keepers of the church, and representatives of the body of the parish; but though in some sort ecclesiastical officers, they are always lay persons. They are a *quasi* corporation (*Smith v. Adkins*, 8 M. & W. 362). They are sometimes appointed by the minister, sometimes by the parish in vestry assembled, sometimes by both together, as custom directs. But where there is no custom, it is said the election must be according to the canons, that they shall be chosen by the joint consent of the minister and parishioners, if it may be; but if they cannot agree, then the minister is to choose one, and the parishioners another. They are to be chosen yearly in Easter-week, and are generally two in number; are obliged when chosen to serve, and are sworn to execute

the office faithfully. Several persons, however, are exempted from the office, viz., peers of the realm, members of Parliament, clergymen, Roman Catholic clergy, dissenting ministers, barristers, attornies, clerks in court, physicians, surgeons, apothecaries, aldermen, dissenting teachers, and persons living out of the parish, unless they occupy a house of trade there (*Stear's P. L.* 84). One of their chief duties is the care and management of the goods belonging to the church, such as the organ, bells, bible, and parish books. But as to the church and church-yard, they have no sort of interest therein; and if any damage be done thereto, the parson only or vicar shall have the action. It is also part of their office, unless other persons are appointed by the ordinary for that purpose, to have the care of the benefice during its vacancy, or while it is under sequestration for the debts of the incumbent. They are moreover required to see to the reparation of the church, and the making of the church-rates, also to make such order relative to seats in the church and chancel, not appropriated to particular purposes, as the ordinary (who has in general the sole power in this matter) shall direct, and in practice, the arrangements are usually made by the church-wardens, even without any special direction from the ordinary. It is incident also to their office to enforce proper and orderly behaviour during divine service. Formerly, too, they were joined with the overseers in the care and maintenance of the poor; but this duty is now in general taken from them by the effect of the act for the amendment of the poor law (4 & 5 Wm. IV., c. 76), and of the regulations introduced under its authority, by the poor law commissioners. If churchwardens waste the goods of the church, or be guilty of other misbehaviour, they are liable to removal; at the end of the year they are bound to render an account of all their receipts and disbursements. 3 *Stephen's Comm.* 89.

CHURCHESSE [*churchset, circiseat, Sax.*], corn paid to the church. Fleta says, it signifies a certain measure of wheat, which, in times past, every man, on St. Martin's day, gave to holy church, as well in the times of the Britons as of the English; yet many great persons, after the coming of the Romans, gave their contributions according to the ancient law of Moses, in the name of first fruits; as in the writ of King Canutus, sent to the Pope, is particularly contained, in which they call it *chirchsed*. *Seld. Hist., Tithes*, 216.

CHURLE [*ceorl, Sax., carl, Germ.*], a tenant at will, of free condition, who held land of the thanes, on payment of rents and services: of two sorts; one who hired the lord's tenementary estate, like our farmers; the other that tilled and manured the demesnes (yielding work and not rent), and were called his *sockmen*, or *ploughmen*. *Spelm.*

CILTRE, corruptly *Siltre*, Chiltern.

CINQUE PORTS [*quinque portus, Lat.*], the

five most important havens in the kingdom, lying on the coast towards France, viz., Dover, Sandwich, Romney, Hastings, and Hythe; to which Winchelsey and Rye have since been added. They have franchises similar in many respects, to the counties palatine, and particular and exclusive jurisdiction (before the mayors and jurats of the ports), in which exclusive jurisdiction the Queen's ordinary writ does not run. This jurisdiction was preserved by the Municipal Corporation Act, 5 & 6 Wm. IV., c. 76, §§ 134, 135.

CIRCADA, a tribute anciently paid to the bishop or archbishop for visiting the churches. *Du Fresne*.

CIRCUITY OF ACTION, a longer course of proceeding to recover a thing sued for than is legal. *Termes de Ley*.

CIRCUITS, eight certain divisions of England and Wales, appointed for the Common Law Judges to go twice a year, in the respective vacations after Hilary and Trinity Terms, to administer justice in the several counties. Two judges go on each of the eight circuits, with the exception of those of North and South Wales, to each of which one Judge is found sufficient. Where there are two Judges, they preside simultaneously in the civil and criminal courts; but the Judge who takes the civil side in one county, takes the criminal side in the next county, and so alternately throughout the circuit. In presiding in the criminal court, the Judge sits robed in scarlet and ermine, and wears a full bottomed wig; but in the civil court he wears a black silk gown, and a short wig. The following are the circuits:—

- (1) The *Northern*, which includes Lancashire, Westmoreland, Cumberland, Northumberland, Durham, and Yorkshire.
- (2) The *Home*, Hertfordshire, Essex, Kent, Sussex, and Surrey.
- (3) The *Western*, Hampshire, Wiltshire, Dorsetshire, Devonshire, Cornwall, and Somersetshire.
- (4) The *Oxford*, Berkshire, Oxfordshire, Worcestershire, Staffordshire, Shropshire, Herefordshire, Monmouthshire, and Gloucestershire.
- (5) The *Midland*, Northamptonshire, Rutlandshire, Lincolnshire, Nottinghamshire, Derbyshire, Leicestershire, and Warwickshire.
- (6) The *Norfolk*, Buckinghamshire, Bedfordshire, Huntingdonshire, Cambridgeshire, Suffolk, and Norfolk.
- (7) The *South Wales*, Glamorganshire, Pembrokeshire, Cardiganshire, Carmarthen-shire, Brecknockshire, Radnorshire, and Cheshire.
- (8) The *North Wales*, Montgomeryshire, Merionethshire, Carnarvonshire, Anglesea, Denbighshire, Flintshire, and Cheshire.

The Judges, upon their circuits, now sit by virtue of four several authorities:—1. The commission of the peace; 2. a commission of *oyer and terminer*; 3. A commission

of general gaol-delivery; 4. A commission of *Nisi Prius*. 3 *Stephen's Comm.* 424.

Circuitus est evitandus; et boni judicis est lites dirimere, ne lis ex lite oritur. 5 Co. 31.—

(Circuity is to be avoided, and it is the duty of a good Judge to determine litigations, lest one lawsuit arise out of another.) On this maxim depends the law of set-off. 2 Geo. II., c. 22, §. 13; 8 Geo. II., c. 24 § 5.

CIRCULATING MEDIUM, more comprehensive than the term money, as it is the method of exchanges, or purchases and sales, whether it be gold or silver coin, or any other article.

CIRCUMSPECTE AGATIS (that you act cautiously), the Statute 13 Edw. I., st. 4, relating to prohibitions. 2 *Inst.* 187.

CIRCUMSTANTIAL EVIDENCE, presumptive proof, when the fact itself is not proved by direct testimony, but is to be inferred from circumstances, which either necessarily or usually attend such facts. It is obvious that a presumption is more or less likely to be true, according as it is more or less probable that the circumstances would not have existed, unless the fact which is inferred from them, had also existed; and that a presumption can only be relied on until the contrary is actually proved. Circumstantial evidence has, in some instances, undoubtedly been found to produce a much stronger assurance of a prisoner's guilt than could have been produced by the more direct and positive testimony. As a general principle, however, it is perfectly true that positive evidence of a fact from credible eye-witnesses is the most satisfactory that can be produced; and the universal feeling of mankind leans to this species of evidence in preference to that which is merely circumstantial. If positive evidence of a fact can be produced, circumstantial evidence ought not to be trusted. Chief Baron Gilbert, therefore, considers it a higher species of proof. He says, "when the fact itself cannot be proved, that which comes nearest to the proof of the fact is the proof of the circumstances which necessarily or usually attend such facts, and which are called presumptions and not proofs, for they stand instead of the proofs of the fact till the contrary be proved." 1 *Phill. Evid.* c. 7, § 2.

CIRCUMSTANTIBUS, by-standers. The supplying or making up the number of jurors, if any of the impanelled appear not, or appearing are challenged by either party, by adding to them so many of such as are present or standing by (*tales de circumstantibus*), who are qualified to serve.

CIRCUMVENTION, any act of fraud, whereby a person is reduced to a deed by deceit. *Scotch Dict.*

CIRIC-BRYCE, any violation of the privileges of a church. *Anc. Inst. Eng.*

CIRIC-SCEAT [*punitiæ seminum*], church-scot, or shot, an ecclesiastical due, payable on the day of St. Martin, consisting chiefly of corn. *Anc. Hist. Eng.*

CISLEU, the ninth month of the ecclesiastical and the third of the civil Hebrew year, an-

swering nearly to our November. *Jahn's Bib. Antiq.*

Citatio est de jure naturali. Ca. B. R. W. 3, 453.—(A summons is by natural right.)

CITATION, a summons to appear, applied particularly to process in the spiritual courts.

Citationes non concedantur priusquam exprimitur supra quâ re fieri debet citatio. 12 Co. 44.—(Summonses should not be granted, before that it is explained for what cause a summons ought to be issued.)

CITIZEN. Aristotle, in the beginning of the third book of the *Politics*, defines a citizen to be one who is a partner in the legislative and judicial power (*μέτοχος νόμοων και ἀρχῆς*).

CITY [*citê*, Fr.], a town corporate, which has usually a bishop and cathedral church. It is called *civitas*, because it is governed by justice and order of magistracy; *oppidum*, for that it contains a great number of inhabitants, and *urbs*, because it is in due form begirt about with walls. *Cowel*.

CIVIL LAW, that which every particular nation, commonwealth, or city has established peculiarly for itself, now more properly distinguished by the name of municipal law.

The term "civil law" is now chiefly applied to that which the old Romans used, compiled from the laws of nature and nations. Its origin is to be traced to the period of abolishing the regal government at Rome, and substituting for it the republic. Sixteen years after the expulsion of the kings, three learned Romans were sent into Greece to collect the laws of the Athenian and other Grecian states; and out of the product of their researches ten commissioners (the *Decemviri*) compiled and digested the body of laws known by the name of the *Laws of the Twelve Tables* (so called from their being engraved on twelve tables of brass), and which constituted the first and principal foundation of the Roman law. The first stage of the civil law was that under the republic, consisting of the *responsa prudentum*, or interpretation of the lawyers, contradistinguished from the written law of the Twelve Tables by the name of "*jus non scriptum*," or unwritten law; and having no other name it began to be called the civil law. Justinian styles it the *jurisprudentia media*—because it intervened between the laws of the Twelve Tables and the Imperial Constitutions. Then came the "*leges*," emphatically so called, because enacted by the whole body of the people, the nobility and commonalty; and then the "*plebiscita*," which were laws enacted by the common people, during the period of their retirement and secession from the nobility; and afterwards, on a reconciliation being effected, it was agreed that these *plebiscita* should be incorporated into the general body of the law. Afterwards came the "*senatus consulta*," or decrees of the senate, which was entrusted with that power, in order to avoid the serious evil and inconvenience of assem-

bling frequently the whole body of the people. The Prætorian edicts came next, being those which were issued by the two Prætors, created by the people to govern them during the absence of the consuls in foreign wars. These edicts, having first been approved by the people, were incorporated with the civil law by the name of *Jus prætorium*. The perpetual edicts were then established—in the first instance, annually, by the *Ædiles Curules*, but afterwards were, by the Cornelian Law, made perpetual. Such were the ingredients of the civil law during the Roman republic. After the government had been transferred into the hands of the Emperor, two other branches were added, viz., the *Constitutiones principum* (imperial constitutions), and *Responsa prudentum* (answers of the lawyers); but these latter were widely different from the *responsa prudentum* under the republic. These were delivered without the sanction of public authority, and formed only the *jus non scriptum*: but those were answers delivered concerning the law by the persons who alone were allowed to do so by the emperors, who gave them a special commission for that purpose. These answers constituted portions of the *jus scriptum* (written law), and the Judges were bound to conform to them. The Imperial Constitutions were the enactments of the emperors after the *Lex Regia* had granted the administration to Augustus, and consisted of such matters as the emperor had ordained by his epistle, or commanded by his edict or proclamation, or decreed by him when sitting in judgment. During the five hundred years which elapsed from the time of Augustus to Justinian, the civil law had swollen to so vast a bulk, that at three different periods as many codes of the Imperial Constitutions were produced, known as the *Gregorian*, the *Hermogenean*, and the *Theodosian* codes. In these three codes, however, there appeared so much redundancy, confusion, and inconsistency, that the Emperor Justinian, A.D. 528, decided upon the grand undertaking of a complete revival and correction of the law. Out of these three codes of the Imperial Constitutions, and also out of the new constitutions promulgated subsequently to the compilation of the Theodosian code, he caused a new one to be compiled, which is extant at this day, under the name of the *Justinian* code. His next step was to abridge and digest the many hundred volumes which contained the authoritative answers or decisions of the Roman lawyers on questions and cases which had been proposed to them (*responsa prudentum*). This undertaking he called the *Digest*, or *Pandect*. From this digest, from the Justinian code, and other commentaries of the ancient lawyers, he then caused the elements of the Roman law to be collected and condensed into the "*Institutes*" in four books, which constituted an abridgment for the use of students. After the completion of his code, of which he published a new and revised

edition, entitled *Codex repetitæ prælectionis*, ordering the former one to be suppressed, he enacted, from time to time, various new constitutions or novels (*Novellæ Constitutiones*, also called *Authenticæ*, to distinguish them from those of succeeding emperors, which were not regarded as of much authority), and also thirteen edicts, which being collected after his decease, became a fourth part of the civil law. Thus the entire body of the civil law (*corpus juris civilis*) in use at this day, consists of these four books: the *Code*, the *Digest*, the *Institutes*, and the *Novels*.

By the civil law was governed the greater part of Britain, for the space of about 360 years (from Claudius to Honorius), during which period, some of the greatest masters of that law, whose opinions appear collected in the body of it,—as Papinian, Paulus, and Ulpian,—sat in the seat of judgment, in this island. After the declension of the Roman empire, the Saxon, Danish, and Norman laws, superseded a great portion of the Roman law; but not very long afterwards, it began again to manifest its influence, and entered largely into the composition of the common law. Under the influence of the foreign ecclesiastics who, pouring into this country after the conquest, long monopolised the administration of the law, great encouragement was given to the adoption of the civil law; till the nobility and laity became so jealous of its prosperity, and alarmed at its progress, that a long and fierce feud ensued between the laity, stoutly struggling for the common law, and the clergy, for the civil and canon law; to which, in the end, they entirely betook themselves; and, withdrawing from the temporal courts, left them to the superintendence of the common lawyers: still, however, keeping an ecclesiastic at the head of affairs, in the high office of chancellor; who, as his office gradually increased in influence and power, was enabled, in time, to introduce much of the spirit of the civil law into the administration of municipal law, especially in the courts of equity.

"The whole body of the civil law" (remarks Chancellor Kent, 1 *Comm.* 548), "will excite never failing curiosity, and receive the homage of scholars, as a singular monument of wisdom. It fills such a large space in the eye of human reason, it regulates so many interests of man, as a social and civilised being; it embodies so much thought, reflection, experience, and labour; it leads us so far into the recesses of antiquity, and it has stood so long against the waves and weathers of time, that it is impossible, while engaged in the contemplation of the system, not to be struck with some portion of the awe and veneration which are felt in the midst of the solitudes of a majestic ruin." *Gibbon's Rome*, ch. 44; *Butler's Horæ Subsecivæ*; *Halifax's Analysis*; *Taylor's Elements of the Civil Law*; *Irving's Introd.*; 1 *Bl. Com.* 392; 1 *Stephen's Comm.* 8, 11, 15.

Civitas et urbs in hoc differunt, quod incolæ

dicuntur civitas, urbs verò complectitur ædificia. Co. Lit. 109.—(A city and a town differ in this, that the inhabitants are called the city, but town includes the buildings.)

CIVIL LIST, an annual sum granted by Parliament at the commencement of each reign, for the expense of the royal household and establishment, as distinguished from the general exigencies of the state, and is the provision made for the Crown out of the taxes, in lieu of its proper patrimony, and in consideration of the assignment of that patrimony to the public use. This arrangement has prevailed from the time of the Revolution downwards, though the amount fixed for the civil list has been subject in different reigns to considerable variation. At the commencement of the present reign a civil list was settled upon her Majesty for life, to the amount of 385,000*l.* per annum, payable quarterly, out of the consolidated fund, of which the sum of 60,000*l.* is assigned for her Majesty's privy purse; in return for which grant it was provided, that the hereditary revenues of the Crown (with the exception of the hereditary duties of excise on beer, ale, and cyder, which were to be discontinued during the present reign), should during the present Queen's life, be carried to and form part of the consolidated fund. The civil list is properly the whole of the sovereign's revenue, in her own distinct capacity; the rest being rather the revenue of the public or its creditors, though collected and distributed again in the name and by the officers of the Crown. The civil list, therefore, now stands in the same place as the hereditary income did formerly, but with this great difference, that it is not chargeable, as the hereditary income was, with the general and public expenses of government.

By the Civil List Act, passed at the Queen's accession, 1 & 2 Vict., c. 2, her Majesty is also empowered to grant pensions to the amount of 1200*l.* per annum, chargeable on her civil list revenues, which are intended for the remuneration of those who have just claims on the royal beneficence, or by their services or discoveries have merited the gratitude of their country. 2 *Step. Com.* 591.

CIVILIAN, one that professes the knowledge of the old Roman law, and of general equity.

CIVILITER MORTUUS, civilly defunct, i. e., dead in law.

CIVILIZATION, a law; an act of justice, or judgment which renders a criminal process civil; performed by turning an information into an inquest, or the contrary. *Harris.*

CLADES [*clida, cleta, cleia*, from the Brit., *clie* and *clia*, Irish], a wattle or hurdle. *Paroch. Antiq.* 575.

CLANDESTINE MORTGAGES. Statute of 4 & 5 Wm. & Mary, c. 16, A. D. 1692, enacted that if any person, having once mortgaged his lands for a valuable consideration shall again mortgage the same lands, or any part thereof, to any person, the former mortgage being in force, and shall not discover in writing to the second mortgagee the first mortgage, such

mortgagor so again mortgaging his lands shall have no relief or equity of redemption against the second mortgagee. But this act is not to bar any widow of dower who does not legally join her husband in such second mortgage.

CLARENDON, *constitutions of*, particular laws or regulations made by the Parliament at Clarendon, a village in Wiltshire, A. D. 1164, whereby the King (Henry II.) checked the power of the Pope and his clergy, and greatly narrowed the total exemption they claimed from the secular jurisdiction; though his further progress was unhappily stopped, by the fatal event of the disputes between him and Archbishop Becket. 4 *Bl. Com.* 422.

CLAIM, a challenge of interest of anything, which is in another's possession, or at least out of a man's own possession, as claim by charter, descent, &c. *Plow.* 359, a.

CLAIM OF LIBERTY, a suit or petition to the Queen in the Court of Exchequer, to have liberties and franchises confirmed there by the Attorney General.

Clam delinquentes magis puniuntur quam palam. 8 Co. 127.—(Those sinning secretly are punished more severely than those sinning openly.)

CLAMEA ADMITTENDA IN ITINERE PER ATTORNATUM. An ancient writ by which the king commanded the justices in eyre to admit a person's claim by attorney, who was employed in the royal service, and could not come in his own person. *Reg. Orig.* 19.

CLASSIARIUS, a seaman or soldier serving at sea.

CLAUD [Brit.], a ditch; *claudere*, to enclose, or turn open fields into enclosures. *Paroch. Antiq.* 236.

Clausula generalis non refertur ad expressa. 8 Co. 154.—(A general clause does not refer to things expressed.)

Clausula quæ abrogationem excludit ab initio non valet. Bac. Max., reg. 19.—(A clause, which excludes abrogation, avails not from the beginning.) 2 *Dwar. Stats.* 673.

Clausula vel dispositio inutilis per præsumptionem vel causam remotam ex post facto non fulcitur. Bac. Max., reg. 21.—(A clause or useless disposition is not supported by a remote presumption or a cause from an after act.)

Lord Bacon explains *clausula vel dispositio inutilis*, when the acts or the words work or express no more than the law by intentment would have supplied; and such a clause or disposition is not supported by any subsequent matter which might give effect to the particular words or acts.

Clausulae inconsuetæ semper inducunt suspicionem. 3 Co. 81.—(Unusual clauses always excite suspicion.)

CLAVES INSULÆ, the keys of the island of Man, or twelve persons to whom all ambiguous and weighty causes are referred.

CLAVIA, a club or mace.

CLAVIGERATUS, a treasurer of a church. *Mon. Angl. t. 1, p. 184.*

CLAUSE IRRITANT, any provision which makes a penalty incurred, and the obligation to be null for the future; or upon any other account, makes the right to vacate or resolve. *Scotch Dict.*

CLAUSE RESOLUTIVE, a provision whereby the contract to which it is affixed is, for non-performance, declared to have been null from the beginning. *Ibid.*

CLAUSE ROLLS [*rotuli clausi*], contain all such matters of record as were committed to close writs; these rolls are preserved in the Tower.

CLAUSUM FREGIT, he broke the close. See **CLOSE**.

CLAUSUM PASCHIÆ, the morrow of the *etas*, or eight days of Easter; the end of Easter; the Sunday after Easter day. 2 *Inst.* 157.

CLAUSURA HEYÆ, an enclosure of a hedge.

CLAWA, a close or small measure of land. *Mon. Ang. t. 2, p. 250.*

CLEAR. In asserting an estate to be of any given "clear" yearly rent, the parties should attend to the meaning of the word "clear," in an agreement between buyer and seller, which is free of all outgoings, incumbrances, and extraordinary charges not according to the custom of the country, as tithes, poor-rates, church-rates, &c., as these are natural charges on the tenant. 1 *Sugd. V. & P.* vol. 1, p. 48.

CLEARANCE, a certificate that a ship has been examined and cleared at the custom house.

CLEARING, among London bankers, a method adopted by them for exchanging the drafts of each others' houses, and settling the difference. Thus at half-past three o'clock a clerk from each banker attends at the clearing-house, where he brings all the drafts on the other bankers which have been paid into his house during that day, and deposits them in their proper drawers, (a drawer being allotted to each banker); he then credits their accounts separately, with the articles which they have against him, as found in the drawer. Balances are then struck from all the accounts, and the claims transferred from one to another, until they are so wound up and cancelled that each clerk has only to settle with two or three others and their balances are immediately paid. *Gilbart's Prac. Trea. on Banking*, 16—20; *Tate's Modern Cambist*.

CLEARING-HOUSE, the place where the operation termed clearing is carried on, situated in a corner of a court at the back of the Guardian Insurance Office, in Lombard Street.

CLERGY [*clergé*, Fr., *clerus*, Lat., *κληρος*, Gk.], the assembly or body of clerks or ecclesiastics set apart from the rest of the people or laity, in order to superintend the public worship of Almighty God, and the other ceremonies of religion, and to administer spiritual counsel and instruction.

The clergy, in general, were heretofore

divided into (1) *regular*, which lived under certain rules, being of some religious order and were called men of religion, or the religious; such as abbots, priors, monks, &c.; and (2) *secular*, that did not live under any certain rules of the religious orders, as bishops, deans, parsons, &c. Now, the term comprehends all persons in holy orders, and in ecclesiastical offices, viz., archbishops, bishops, deans and chapters, archdeacons, rural deans, parsons (either rectors or vicars), and curates, to which may be added parish clerks. 3 *Stephen's Com.* 55.

CLERICO INFRA SACROS ORDINES CONSTITUTO, NON ELIGENDO IN OFFICIUM, a writ directed to those who have thrust a bailiwick or other office upon one in holy orders, charging them to release him. *Reg. Orig.* 143.

CLERICO CAPTO PER STATUTUM MERCATORUM, &c., a writ for the delivery of a clerk out of prison, who is taken and incarcerated upon the breach of a statute-merchant. *Ibid.* 147.

CLERICO CONVICTO COMMISSO GAOLÆ IN DEFECTU ORDINARIJ DELIBERANDO, an ancient writ, that lay for the delivery of a clerk to his ordinary, that was formerly convicted of felony, by reason his ordinary did not challenge him, according to the privilege of clerks. *Ibid.* 69.

CLERICUM ADMITTENDUM, a writ of execution directed, not to the sheriff, but to the bishop or archbishop, and requiring him to admit and institute the clerk of the plaintiff. 3 *Bl. Com.* 413.

Clericus et agricola et mercator, tempore belli, ut oretque, colat, commutet, pace fruuntur. 2 *Inst.* 58.—(A clergyman, a husbandman, and a merchant, in order that they may preach, cultivate, and trade, enjoy peace in time of war.)

Clericus non connumeretur in duabus ecclesiis. 1 *Roll. R.* 454.—(A clergyman should not be appointed to two churches.)

Clerici non ponantur in officiis. *Co. Litt.* 96.—(Clergymen should not be placed in offices.)

Clerici, vel monachi, ne sæcularibus negotiis se immisceant. *Ferrier's Rom. Hist.* 117.—(Clergymen or monks should not mix themselves in secular matters.)

CLERK [*cleric*, Sax., *clericus*, Lat.], originally a learned man or man of letters, whence the term is appropriated to churchmen, who were called clerks, and now clergymen; the nobility and gentry being bred to the exercise of arms, and none left to cultivate the sciences but ecclesiastics. Where the canon law has full power, the word "clerk" comprehends *sacerdotes*, *diaconi*, *subdiaconi*, *lectores*, *acolyti*, *exorcistæ*, and *ostiarii*. The word has been anciently used for a secular priest, in opposition to a religious or regular.

In modern usage, the word means a writer, one who is employed in the use of the pen, in an office, public or private, either for keeping accounts or entering minutes. It is synonymous with secretary, but not always.

A clerk is generally an officer subordinate to a higher officer, board, corporation, or private individual; but a secretary may either be a subordinate officer, or the head of a department. *Blount*.

CLIENT [*cliens*, said to contain the same element as the verb *cluere*, to hear or obey, and is accordingly compared by Niebuhr with the German word *hoeriger*, a dependant], a person who seeks advice of a lawyer or commits his cause to the management of one, either in prosecuting a claim, or defending a suit in a court of justice. The relation between solicitor and client, and the power which his situation gives the former over the latter, makes it impossible to be perfectly assured whether, in their transactions, the client is a free agent or under influence and imposition; a court of equity, therefore, will not let a solicitor take a security from his client, pending a suit by way of gratuity, however reasonable it might be; and equity will not allow a solicitor to make a purchase from his client whilst the relation subsists.

Among the Romans, nearly all the citizens were comprehended in two classes, patron, and client. Their relative rights and duties were as follows:—The patron was the legal adviser of the client; he was the client's guardian and protector, as he was the guardian and protector of his own children, he maintained the client's suit when he was wronged, and defended him when another complained of being wronged by him; in a word, the patron was the guardian of the client's interests, both public and private. The client contributed to the marriage portion of the patron's daughter, if the patron were poor; and to his ransom, or that of his children, if taken prisoners; he paid the costs and damages of a suit which the patron lost, and of any penalty in which he was condemned; he bore a part of the patron's expenses incurred by his discharging public duties, or filling the honourable places in the state. Neither party could accuse the other or bear testimony against the other, or give his vote against the other. This relationship between patron and client subsisted for many generations, and resembled in all respects the relationship by blood. It was the glory of illustrious families to have many clients, and to add to the number transmitted to them by their ancestors. But the clients were not limited to the *δημοτικοί*, the colonies and states connected with Rome by alliance and friendship, and the conquered states had their patrons at Rome, and the senate frequently referred the disputes between such states to their patrons and abided by their decision.

In the Greek writers on Roman history, patronus is represented by *προσδάτης*, and *cliens* by *πελάτης*. The early Romans threw a sanctity around this obligation on the patron's part. It was expressly enforced by a law of the Twelve Tables, *patronus, si clienti fraudem fecerit, sacer esto*. Virgil, many

ages after, places the unjust patron in Tartarus, among the violators of natural and moral decorum: *hic quibus invisi fratres, pulsatusve parens, et fraus innoxia clienti*, *Æ.* vi. 608. This state of mutual dependence, which commenced with the monarchy, was productive of the happiest effects; till, as riches and pride increased, new duties were imposed on the clients; they were harassed with constant attendance, and mortified by neglect; in a word, they were little better than slaves. *Smith's Dict. of Antiq.*

CLOERE [*cloaca*, Lat.], a prison or dungeon.

CLOSE, a field or piece of ground parted off from other fields or common ground, by banks, hedges, &c. Every entry upon another's lands (unless by the owner's leave, or in some very particular cases) is an injury or wrong, for satisfaction of which an action of trespass will lie to recover such damages as a jury may think proper to assess, and this injury is called trespass *quare clausum fregit*, or trespass for breaking a man's close.

CLOSE ROLLS, and **CLOSE WRITS** royal letters, under the Great Seal, addressed to particular persons for particular purposes, which, because they are not intended for public inspection, are closed and sealed, and recorded in the close rolls; hence their name. *2 Bl. Com.* 346.

CLOUGH, a valley. *Domesday*. Also an allowance of two lbs. in every cwt. for the turn of the scale, on buying goods wholesale by weight. *Lex Mercat.*

CLUB-LAW, regulation by force; the law of arms.

CLUBS, or **CLUB-HOUSES**, associations to which individuals subscribe for purposes of mutual entertainment and convenience; the affairs of which are generally conducted by a steward or secretary, who acts under the immediate superintendence of a committee. The members of a club, merely as such, are not liable for debts incurred by the committee, for work done or goods supplied to the club.

CLYPEUS, a shield; metaphorically, one of a noble family. *Clypei prostrati*, a noble family extinct. *Mat. Paris*, 463.

COADJUTOR, an assistant, helper, or ally; particularly a person appointed to assist a bishop, being grown old or infirm, so as not to be able to perform his duty. *52 Geo. III.*, c. 62; *1 Gibs. Cod.* 155.

COAL-NOTE, a particular description of promissory note in the coal trade, for which there are some peculiar provisions, it having been enacted, that all lightermen and other buyers or contractors of coal aboard ship, in the port of London, shall, at the time of delivery of such coals, either pay for the same in ready money, or give their promissory note for payment, expressing therein the words "value received in coals," and that such notes may be protested and noted as inland bills; and that in default of such protest or noting, and notice thereof given to the endorsers within twenty days after non-pay-

ment, they shall be discharged from liability; and it is enacted, that such buyer of coals, and the master of the vessel, shall, for refusing to insert the words "value received in coals," or receiving a note for coals without those words, forfeit 100*l*. 3 Geo. II., c. 26, §§ 7 and 8. Upon this act it has been decided, that it extends only to contractors for coals, and to cases between an indorser and indorsee; and that though the act directs that the instrument shall be drawn in a particular form, under a severe penalty, yet, if drawn in a different form, it is not void, and that the effect of the act is only to subject a party to a penalty.

COAT-ARMOUR, heraldic ensigns which Richard I. brought from the Holy Land, where they were first invented, and painted on the shields of the knights, to distinguish the variety of persons of every Christian nation who resorted thither, and who could not, when wrapped up in steel, be otherwise known or ascertained. See **CHIVALRY**, **COURT OF**.

COCHERINGS, or **COSHERINGS**, Irish exactions, or tributes, now reduced to chief rents. See **BONAUGHT**.

COCK-PIT, a name familiarly given to the Judicial Committee of the Privy Council.

COCKET, a seal belonging to the custom house, or rather a scroll of parchment, sealed and delivered by the officers of the custom house to merchants, as a warrant that their merchandizes are customed. 11 Hen. VI., c. 15; likewise a sort of measure. *Fleta*, l. 2, c. 9.

COCKSETUS, a boatman, cockswain; contracted into coxen. *Cowel*.

CODE, a collection or system of laws. The collection of laws and constitutions, made by order of the emperor Justinian, is distinguished by the appellation of "The Code," by way of eminence. *The Code Napoleon*, or civil code of France, proceeding from the French revolution, and the administration of Napoleon, while First Consul, effected great changes in the laws of that country. In 1800 Bonaparte directed a commission of jurists of the first eminence in France, under the precedence of Cambacères, to frame a code of laws for the kingdom. The commission consisted of Tronchet, president of the Court of Cassation, Bigot de Préaménen, Portalis, and Malleville. The first code which was framed, and of which a *projet* was printed early in 1801, was sent to the different courts of justice for their remarks and suggestions. The remarks and suggestions were also printed, and the whole was then laid before the section of legislation of the Council of State, consisting of Boulay, Berlier, Emmercy, Portalis, Roederer Real, and Thibaudeau. Bonaparte and Cambacères, his colleague in the consulship, took an active part in the debate. The various heads of the code were successively discussed, and then laid before the tribunate, where some of the provisions met with considerable opposition. At length the code passed both the tribunate and the

legislative body, and was promulgated in 1804, as the 'Code Civil des Français.' When Napoleon became emperor, the name was changed to that of Code Napoleon, by which it is still often designated, though it is now styled by its original name of Code Civil. A Code de Procédure Civile, a Code de Commerce, Code d'Instruction Criminelle, and Code Pénal, were afterwards compiled and promulgated under Bonaparte's administration. To these was subsequently added a Code Forestier, or regulations concerning the forests, which was promulgated under Charles X. in 1827. All these codes are sometimes called 'Les six Codes.' A Code de la Conscription, and a Code Militaire, were also promulgated under Napoleon. All these codes under his administration are sometimes confusedly designated by the name of the Code Napoleon. *Life of Napoleon, by Vieusseux; Savigny; Vom Beruf unsrer zeit se zur Getzgebung und Rechtswissenschaft.*

CODEX GREGORIANUS, and **HERMOGENIANUS**. It does not appear quite certain whether this title denotes one or two collections. The general opinion, however, is, that there were two codices, compiled respectively by Gregorianus and Hermogenianus, who are sometimes, though, as it seems, incorrectly, called Gregorius and Hemogenes. The codex of Gregorianus consisted of thirteen books at least, which were divided into titles. The fragments of this codex begin with constitutions of Septimius Severus, and ends with Diocletian and Maximian. The codex of Hermogenianus, so far as we know of it, is only quoted by titles, and it also contains constitutions of Diocletian and Maximian; it may perhaps have consisted of one book only, and it may have been a kind of supplement or continuation to, or an abridgment of, the other. The name Hermogenianus is always placed after that of Gregorianus when this code is quoted. *Smith's Dict. of Antiq.*

CODEX JUSTINIANEUS. In February of the year A.D. 528, Justinian appointed a commission, consisting of ten persons, to make a new collection of imperial constitutions. Among these ten were Tribomanus, who was afterwards employed on the Digesta and the Institutiones, and Theophilus, a teacher of law at Constantinople. The commission was directed to compile one code from those of Gregorianus, Hermogenianus, and Theodosius, and also from the constitutions of Theodosius made subsequently to his code from those of his successors, and from the constitutions of Justinian himself. The instructions given to the commissioners empowered them to omit unnecessary preambles, repetitions, contradictions, and obsolete matter; to express the laws to be derived from the sources above mentioned in brief language, and to place them under appropriate titles; to add to, take from, or vary the words of the old constitutions, when it might be necessary; but

to retain the order of time in the several constitutions, by preserving the dates and the consuls' names, and also by arranging them under their several titles in the order of time. The collection was to include rescripts and edicts, as well as constitutiones, properly so called. Fourteen months after the date of the commission, the code was completed, and declared to be law, under the title of the Justinianus Codex; and it was declared that the sources from which this code was derived, were no longer to have any binding force, and that the new code alone should be referred to as of legal authority. *Smith's Dict. of Antiq.*

CODEX THEODOSIANUS. In the year 429, Theodosius II., commonly called Theodosius the younger, appointed a commission consisting of eight persons, to form into a code all the edicts and leges generales from the time of Constantine, and according to the model of those of Gregorianus and Hermogenianus. In 435, the instructions were renewed or repeated; but the commissioners were now sixteen in number. Antiochus was at the head of both commissions. It seems, however, to have been originally the design of the emperor, not only to make a code which should be supplementary to, and a continuation of, the codex Gregorianus and Hermogenianus, but also to complete a work on Roman law from the classical jurists, and the constitutions prior to those of Constantine. However this may be, the first commission did not accomplish this, and what we have now is the code which was compiled by the second commission. This code was completed and promulgated as law in the Eastern empire in 438, and declared to be the substitute for all the constitutions made since the time of Constantine. In the same year the code was forwarded to Valentinian III., the son-in-law of Theodosius, by whom it was laid before the Roman senate, and confirmed as law in the Western empire. *Ibid.*

CODICIL [*codicillus*, from *codex*, Lat., a little book or writing], a supplement to a will, containing anything which the testator wishes to add, or any explanation or revocation of what the will contains.

COFFERER OF THE QUEEN'S HOUSEHOLD, a principal officer of the royal establishment, next under the controller, who, in the counting-house and elsewhere, has a special charge and oversight of the other officers, whose wages he pays. He passes his accounts in the Exchequer. 39 *Eliz.*, c. 7.

Cogitationis poenam nemo meretur. 2 Inst. Jur. Civ. 658.—(No man deserves punishment for a thought.)

COGNATI, relations by the mother's side.

COGNATIONE. See **COUSINAGE**.

COGNIZANCE, or **CONUSANCE**, the hearing of a thing judicially; also an acknowledgment of a fine; and in replevin it is the pleading of a defendant who has acted as bailiff, &c., to another, in making a distress,

by which he alleges the right or title to be in that person by whose command he acted. *Stephen's Plead.* 225. *Cognizance of pleas* is a privilege granted by the Crown to a city or town, to hold pleas of all contracts, &c. within the liberty of the franchise; and when any person is impleaded for such matters in the courts of Westminster, the mayor, &c., of such franchise may ask cognizance of the plea, and demand that it shall be determined before them; but if the courts at Westminster are possessed of the plea before cognizance be demanded, it is then too late. *Termes de Ley.*

COGNISOR, and **COGNISFE**, the former is he who passes or acknowledges a fine of lands or tenements to another; the latter is the person to whom the fine of the said lands, &c., is acknowledged. 32 *Hen. VIII.*, c. 5.

COGNITION, the process whereby molestation is determined. *Scotch Dict.*

COGNITIONES, ensigns and arms, or a military coat painted with arms. *Mat. Par.* 1250.

COGNITIONIBUS MITTENDIS, an abolished writ to one of the Justices of the Common Pleas, or other, who has power to take a fine, who having taken the fine defers to certify it, commanding him to certify it. *Reg. Orig.* 68.

Cognomen majorem est ex sanguine tractum, hoc intrinsecum est; agnomen extrinsecum ab eventu. 6 Co. 65.—(The cognomen of ancestors is derived from blood, and is intrinsic; an agnomen arises from an event, and is extrinsic.)

COGNOVIT ACTIONEM (he has confessed the action). A defendant's written confession of an action brought against him, to which he has no available defence. It is usually upon condition that he shall be allowed a certain time for the payment of the debt or damages, and costs. It is supposed to be given in court, and it impliedly authorises the plaintiff's attorney to do every thing necessary in order to obtain judgment. The cognovit should be given after declaration, as required by 1 Wm. IV., c. 7, § 7, in order not to be affected by 6 Geo. IV., c. 16, § 108; if it be given after plea pleaded, it contains an agreement to withdraw the plea, in which case it is termed a *cognovit actionem relictâ verificatione* (he has confessed the action, having abandoned the plea). A mere cognovit does not require any stamp, but if it be of the value of 20*l.* or upwards, and contain any terms of agreement, as if it be payable by instalments and implies an agreement to wait accordingly, it must be stamped as an agreement, and it may be stamped, like other agreements not under seal, within twenty-one days after it is executed without payment of any penalty. By 1 & 2 Vict., c. 110, § 9, no cognovit given by any person shall be of any force, unless there shall be present some attorney of one of the Superior Courts on behalf of such person expressly named as attorney at his request.

to inform him of the nature and effect thereof before it is executed, which attorney shall subscribe his name as a witness to the due execution thereof, and thereby declare himself to be attorney for the person executing the same, and state that he subscribes as such attorney. Sec. 10 enacts that if not executed in this manner, it shall not be rendered valid by proof that the person executing the same did, in fact, understand the nature and effect thereof, and was fully informed of the same. The 3 Geo. IV., c. 39, § 3, enacts that every cognovit given in the Court of Queen's Bench, or a true copy thereof, if given in any other court, shall, together with an affidavit of the time of the execution thereof, be filed as therein directed, within twenty-one days after execution, otherwise the same shall be void against the assignees, if the defendant become bankrupt. The 6 & 7 Vict., c. 66, provides that in addition to the book directed to be kept by the 3 Geo. IV., c. 39, and which might be inspected for 6d., another book or index shall be kept, containing the names, additions, and descriptions of the respective defendants or persons giving any *cognovit*, but containing no further particulars thereof, which book might be inspected by any person on payment of 1s. in addition to the aforesaid 6d. This statute was passed to prevent frauds on creditors by secret cognovits.

Cohæres una persona censetur, propter unitatem juris quod habent. Co. Lit. 163.—(Cohærs are deemed as one person, on account of the unity of law which they possess.)

COHEIR, one of several among whom an inheritance is divided.

COHEIRESS, a woman who has an equal share of an inheritance with other women.

COHUAGIUM, a tribute paid by those who met promiscuously in a market or fair. *Du Cange.*

COIF, the badge of serjeants-at-law, who are called serjeants of the coif, from the lawn patch or coif they wear on their heads under their caps when they are created serjeants.

COIGNE, horse-meat, man's meat and money at pleasure. *Irish Term.*

COIN [*coign*, Fr., *cuneus*, Lat., a wedge], a piece of metal stamped with certain marks, and made current at a certain value. Strictly speaking, coin differs from money, as the species differs from the genus. Money is any matter, whether metal, paper, beads, shells, &c., which have currency as a medium in commerce. Coin is a particular species, always made of metal, and struck according to a certain process called coining. The coining of money is in all States the act of the sovereign power; and, as money is the medium of commerce, it is the Crown's prerogative, as arbiter of domestic commerce, to give it authority or make it current.

The most ancient coin of which we have any knowledge, is the Persian gold coin, called the *daric*, *δαρυκός*, stamped on one side with the figure of an archer, crowned

and kneeling upon one knee, and on the other with a sort of *quadrata incusa*, or deep cleft. *Genesius (Heb. Lexicon)* supposes the name to be derived from an ancient Persian word, signifying king or royal palace, or the bow of the king, in allusion to the figure stamped upon it. The value of the daricus in our money, computed from the drachma, is 16s. 3d.; but if reckoned in comparison with our gold money, it is worth much more. *Jahn's Bib. Antiq. c. vii. § 117.*

COLD-WATER-ORDEAL, the trial which was ordinarily used for the common sort of people, who, having a cord tied about them, under their arms, were cast into some river, and if they sunk to the bottom until they were drawn up, which was in a very short limited space, then were they held guiltless: but such as did remain upon the water were held culpable, being, as they said, of the water rejected and kept up. *Verstegan's Rest. of Decayed Intelligence.*

COLIBERTS, tenants in socage, particularly such villains as were manumitted or made freemen; but they had not an absolute freedom, for though they were better than servants, yet they had superior lords, to whom they paid certain duties, and in that respect they might be called servants, though they were of middle condition, between freemen and servants. *Du Cange.*

COLLATERAL, indirect, sideways, that which hangs by the side; applied in several ways, thus:—*collateral assurance*, that which is made over and above the deed itself; *collateral consanguinity or kindred*, which descend from the same stock or ancestor as the lineal relations, but do not descend from each other, as the issues of two sons; *collateral issue*, where a criminal convict pleads any matter allowed by law, in bar of execution, as pregnancy, pardon, an act of grace, or diversity of person, viz., that he or she is not the same that was attainted, &c., whereon collateral issue is taken, and tried by a jury *instantly*; *collateral security*, where a deed is made of other property, besides that already mortgaged, for the better safety of the mortgagee; *collateral warranty* was where the heir's title to the land neither was, nor could have been, derived from the warranting ancestor, as where a younger brother released to his father's disseisor, with warranty, this was collateral to the elder brother. The whole doctrine of collateral warranty seems repugnant to plain and unsophisticated reason and justice; and even its technical grounds are so obscure that the ablest legal writers are not agreed upon the subject. *Wright's Tenures*, 168; *Gilbert's Tenures*, 143. But now warranty is abolished by 3 & 4 Wm. IV., c. 74, § 14.

COLLATIO BONORUM (a contribution of goods). Where a portion of money, advanced by the father to a son or daughter, is brought into *hotchpot*, in order to have an equal distributory share of his personal estate at his death, according to the intent of the 22 & 23 Car. II., c. 10.

COLLATION, the comparison of a copy with its original to ascertain its conformity; or the report of the officer who made the comparison.

COLLATION TO A BENEFICE, where the bishop and patron are one and the same person; in which case the bishop cannot present to himself, but he does, by the one act of collation or conferring the benefice, the whole that is done in common cases both by presentation and institution. *2 Bl. Com.* 22.

COLLATIONE FACTA UNI POST MORTEM ALTERIUS, a writ directed to justices of the Common Pleas, commanding them to issue their writ to the bishop, for the admission of a clerk in the place of another presented by the Crown, where there had been a demise of the Crown during a suit; for judgment once passed for the king's clerk, and he dying before admittance, the king may bestow his presentation on another. *Reg. Orig.* 31.

COLLATIONE HEREMITAGII, a writ whereby the king conferred the keeping of an hermitage upon a clerk. *Reg. Orig.* 303, 308.

COLLATION OF SEALS, when upon the same label one seal was set on the back or reverse of the other.

COLLEGE [*collegia*], a civil corporation, company, or society of men, having certain privileges and endowed with certain revenues, founded by royal license. An assemblage of several of these colleges is called a university.

COLLEGIATE CHURCH, a religious house built and endowed for a society or body corporate, a dean or other president, and secular priests as canons or prebendaries.

Collegium est societas plurium corporum simul habitantium. *Jenk. Cent.* 229.--(A college is a society of several persons dwelling together.)

COLLIGENDUM BONA DEFUNCTI, *letters ad*, in defect of representatives and creditors to administer to an intestate, &c., the ordinary may commit administration to such discreet person as he approves of, or grant him these letters to collect the goods of the deceased, which neither makes him executor nor administrator; his only business being to keep the goods in his safe custody, and to do other acts for the benefit of such as are entitled to the property of the deceased. *2 Bl. Com.* 505.

COLLISION OF SHIPS, ships running foul of each other. The remedy is either an action at law, or a suit in the Court of Admiralty. The possibilities under which a collision may occur have been thus stated:—In the *first* place, it may happen without blame being imputable to either party; as where the loss is occasioned by any other greater body, in that case the misfortune must be borne by the party on whom it happens to light, the other not being responsible to him in any degree. *Secondly*, a misfortune of this kind may arise where both parties are to blame, where there has been a want of due diligence or of skill on both sides; in

such a case the rule of law is, that the loss must be apportioned between them, as having been occasioned by the fault of both of them. *Thirdly*, it may happen through the misconduct of the suffering party only, and then the rule is that the sufferer must bear his own burden. *Lastly*, it may have been the fault of the ship which ran the other down, and in that case the injured party would be entitled to an entire compensation from the other.

It is further a general rule, that the law imposes upon the vessel, having the wind free, the obligation of taking proper measures to get out of the way of a vessel, that she close hauled, and of showing that she has done so, and if not, the owners of her are responsible for the loss which ensues.

COLISTRIGIUM, a pillory.

COLLOQUIUM, a talking together or affirming of a thing, laid in declarations for words in actions of slander, &c.

COLLUSION, a deceitful agreement or contract between two or more persons, for the one to bring an action against the other, to some evil purpose, as to defraud a third person of his right, &c.

COLONUS, an husbandman or villager, who was bound to pay yearly a certain tribute; or, at certain times in the year, to plough some part of the lord's land; hence the word *clown*.

COLONY [*colere*, Lat., to cultivate], a company or body of people removed from their mother-country to a remote province or country, where they form a settlement under the sanction of the government. Also, the place where such a settlement is formed, as the colonies belonging to Great Britain in the East and West Indies, North America, &c.

The Privy Council and the House of Lords are the two tribunals before which are reviewed the decisions of all the colonial and foreign judicatures of this vast empire, except in criminal cases, which are appealed from to the Court of Queen's Bench.

The Greeks and Romans settled their countrymen in a variety of places. *Acts* xvi. 12.

COLOR, a term of the ancient rhetoricians, and early adopted into the language of pleading. It is an apparent or *prima facie* right; and the meaning of the rule, that pleadings in confession and avoidance should give color, is that they should confess the matter adversely alleged, to such an extent, at least, as to admit some apparent right in the opposite party, which requires to be encountered and avoided by the allegation of new matter. Color is either express, i. e., formally inserted in the pleading; or implied, which is naturally inherent in the structure of the pleading. *Stephen's Plead.* 233; *3 Bl. Com.* 309.

COLOR OF OFFICE, an act unjustly done by the countenance of an office, being grounded upon corruption, to which the office is as a shadow and color. *Plowd.* 64.

COLPICES, young poles, which, being cut down, are made leavers or lifters. *Blount*.

COLPO [*a copo de cere*], a small wax candle.

COMBARONES, the fellow barons or commonalty of the Cinque Ports.

COMBATERRÆ [*cumbe*, Sax., *kum*, Brit., *comb*, Eng.], a valley or piece of low ground between two hills. *Ken. Glos.*

COMBINATION, an assembly of men met to perpetrate unlawful acts. 6 Geo. IV., c. 129.

COMBUSTIBILITY, PRETERNATURAL.

A question may arise in cases where persons are found burnt to death, and that is, can there be such a thing as preternatural combustibility of the human body? Several cases are recorded, by which it appears that the phenomenon has been produced by the long and immoderate use of spirituous liquors. Some deductions have been drawn from these cases, viz.: (1.) The subjects were nearly all females, and they were far advanced in life. (2.) Most of the individuals had, for a long time, made an immoderate use of spirituous liquors, and they were either very fat or very lean. (3.) The combustion occurred accidentally, and often from a slight cause, such as a candle, a coal, or even a spark. (4.) The combustion proceeded with great rapidity, usually consuming the entire trunk, while the extremities, as the feet and hands, were occasionally left uninjured. (5.) Water, instead of extinguishing the flames, which proceeded from the parts on fire, sometimes gave them more activity. (6.) The fire did very little damage, and often did not affect the combustible objects which were in contact with the human body, at the moment when it was burning. (7.) The combustion of these bodies left as a residuum, fat, foetid ashes, with an unctious, stinking, and very penetrating soot. (8.) The combustions have occurred at all seasons, but most frequently in winter, and in northern as well as southern countries.

As to its cause various opinions have been promulgated. Some suppose that there is an alcoholic impregnation of the body, and that the actual contact of fire is necessary to produce it. But there is no proof of such a saturation of the organs; and if it were so, it would not, judging from comparative experiments, render the body combustible. Another theory refers the combustion to the agency of the electric fluid. It is difficult, however, on this hypothesis, to explain the rapidity of the combustion, and the complete reduction of the body, or its parts, to ashes. It has also been referred to an internal decomposition, and the formation of new products, which are highly inflammable. Another opinion is, that phosphurated hydrogen may be generated in the system, an explanation which will almost justify the term in common use—spontaneous combustion.

These cases differ from ordinary combustion, which requires large quantities of fuel to convert the body into ashes. It is also

slow in its progress, and the heat required being high, extends itself to surrounding substances. It is often incomplete, and particularly so as to the bones. There will also be blisters, scars, &c., on various parts of the unconsumed body. But the empyreumatic odour, and the moist and sooty matter resting on the furniture and walls are wanting, and, if Fontenelle be correct, the hair, the most combustible part of the human frame, is never burnt, while the liver and spleen are always so.

The application of these distinctions in medico-legal cases is manifest. *Beck's Med. Jurisp.* 575.

It is well known that vegetable substances, when highly dried and closely heaped, will frequently burst into flame.

COMBUSTIO PECUNIÆ, the ancient way of trying mixed and corrupt money, by melting it down upon payments into the Exchequer.

COME CEO, as well for this.

COMITATUS, a county.

COMITATU COMMISSO, a writ or commission whereby a sheriff is authorised to enter upon the charge of a county. *Reg. Orig.* 295.

COMITATU ET CASTRO COMMISSO, a writ by which the charge of a county, together with the keeping of a castle, is committed to the sheriff. *Ibid.*

COMITES, earls.

COMITIVA, a companion or fellow traveller; a troop or company of robbers.

COMITY OF NATIONS, the most appropriate phrase to express the true foundation and extent of the obligation of the laws of one nation within the territories of another. It is derived altogether from the voluntary consent of the latter; and it is inadmissible, when it is contrary to its known policy, or prejudicial to its interests. In the silence of any positive rule, affirming, or denying, or restraining the operation of foreign laws, courts of justice presume the tacit adoption of them by their own government, unless repugnant to its policy. It is not the comity (courtesy) of the courts, but the comity of the nation, which is administered and ascertained in the same way, and guided by the same reasoning, by which all other privileges of the municipal law are ascertained and guided. *Story's Conflict of Laws*, § 38.

COMMANDERY, a manor or chief messuage with lands and tenements thereto appertaining, which belonged to the priory of St. John of Jerusalem, in England; he who had the government of such a manor or house was styled the commander, who could not dispose of it, but to the use of the priory, only taking thence his own sustenance, according to his degree. The manors and lands belonging to the priory of St. John of Jerusalem were given to Henry the Eighth, by 32 Hen. VIII., c. 20, about the time of the dissolution of abbeyes and monasteries: so that the name only of commanderies remains, the power being long since extinct.

COMMANDITE, or IN COMMENDAM,

partnerships which are limited where the contract is between one or more persons, who are general partners, and jointly and severally responsible, and one or more other persons, who merely furnish a particular fund or capital stock, and thence are called *commandataire* or *commendataires*, or partners in *commandité*; the business being carried on under the social name or firm of the general partners only, composed of the names of the general or complimentary partners, the partners in *commandité* being liable to losses only to the extent of the funds or capital furnished by them. *Code of Commerce of France*, art. 23, 24; *Watson on Partn.* ch. 1, p. 2; *Pothier, de Société*, n. 60, 102; *Story on Partn.* 109, 119, 120.

COMMANDMENT, order, direction; also the offence of inducing another to transgress the law, or do anything contrary to it. The civilians call it *mandatum*.

COMMARCHIO, the confines of the land.

COMMENDA, or **ECCLESIA COMMENDATA**, a living commended by the Crown to the care of a clerk, to hold till a proper pastor is provided for it. This may be temporary for one, two, or three years, or perpetual, being a kind of dispensation to avoid the vacancy of the living, and is called a *commenda retinere*, and has been usually granted to bishops in the poorer sees to aid the deficiency in their episcopal revenue. There is also a *commenda recipere*, which is to take a benefice *de novo* in the bishop's own gift, or the gift of some other patron consenting to the same; and this is the same to him as institution and induction are to another clerk. But now by 6 & 7 Wm. IV., c. 18, no ecclesiastical dignity, office, or benefice shall be held in *commendam* by any bishop unless he shall have held the same when the act passed; and every *commendam* thereafter granted, whether to retain or to receive, and whether temporary or perpetual, shall be absolutely void.

Commenda est facultas recipiendi et retinendi beneficium contra jus positivum, à supremâ potestate. Moor, 905.—(A *commendam* is the power of receiving and retaining a benefice contrary to positive law, by supreme authority.)

COMMENDATORY, he who holds a church living or preferment in *commendam*.

COMMENDATORS, secular persons upon whom ecclesiastical benefices are bestowed, called so, because the benefices were commended and intrusted to their oversight; they are not proprietors, but only trustees or tutors. *Scotch Dict.*

COMMENDATORY LETTERS, such as are written by one bishop to another in behalf of any of the clergy, or others of his diocese travelling thither, that they may be received among the faithful; or that the clerk may be promoted; or necessities administered to others, &c.

COMMENDATUM. See **DEPOSIT**.

COMMENDATUS, one who lives under the protection of a great man. *Spelm.*

COMMERCE [*commutatio mercium*], the intercourse of nations in each others' produce and manufactures, in which the superfluities of one are given for those of another, and then re-exchanged with other nations for mutual wants. There is a distinction between commerce and trade; the former relates to our dealings with foreign nations, colonies, &c.; the latter to mutual dealings at home.

The affairs of commerce are regulated by the Law Merchant, *Lex Mercatoria*, or Commercial Law. "Lord Mansfield," said Mr. Justice Buller (*Lickbarrow v. Mason*, 2 T. R. 631), "may be truly said to be the founder of the commercial law of this country. We all know that, from his time, the great study has been to find out some certain general principles which shall be known to all mankind, to rule not only one particular case, but to serve as a guide to the future. Most of us have heard those principles stated, reasoned upon, enlarged, and explained, till we have been lost in admiration at the strength and stretch of the human understanding." Commercial law is based upon very different principles from those which govern real property law, and is derived from a variety of sources and authorities—from international law, from the different maritime codes of ancient Europe, and from the imperial code of Rome. *McCulloch's Comm. Dict.*

Commercium jure gentium commune esse debet, et non in monopolium et privatum paucorum quæstum convertendum. 3 Inst.—(Commerce, by the law of nations, ought to be common, and not converted to monopoly and the private gain of a few.)

COMMISSARY, one who is sent or delegated to execute some office or duty as the representative of his superior. In ecclesiastical law, an officer of the bishop, who exercises spiritual jurisdiction in distant parts of the diocese. In military affairs, an officer who has the charge of furnishing provisions, clothing, &c., for an army.

COMMISSARIATE, the whole body of officers in the commissaries' department.

COMMISSION, the warrant or letters-patent which all persons exercising jurisdiction, either ordinary or extraordinary, have, to authorise them to hear or determine any cause or action, or do other lawful things, as the commission of the Judges, &c. There was formerly a High Commission Court founded on 1 Eliz., c. 1, but it was abolished in the reign of Charles II., though an impotent attempt was made to re-establish it during the succeeding reign.

In commerce, the order by which any one traffics or negotiates for another; also the per centage given to factors or agents for transacting the business of others.

COMMISSION OF ANTICIPATION, an authority under the Great Seal to collect a tax or subsidy before the day. 15 Hen. VIII.

COMMISSION OF ARRAY, issued to send

into every county officers to muster or set in military order the inhabitants of every district; but the introduction of commissions of lieutenancy, which contained in substance the same powers as these commissions, superseded them. 2 *Step. Com.* 597.

COMMISSION OF BANKRUPTCY, the authority formerly given by the Lord Chancellor to certain commissioners, empowering them to proceed in the bankruptcy of a trader. Instead of a commission, a fiat now issues by virtue of 1 & 2 Wm. IV., c. 56, § 12.

COMMISSION OF CHARITABLE USES, issues out of Chancery to the bishop and others, where lands given to charitable uses are misemployed, or there is any fraud or dispute concerning them, to enquire of and redress the same, &c. 43 *Eliz.* c. 4.

COMMISSION DAY, the opening day of the assizes.

COMMISSION DEL CREDERE, where an agent undertakes to guaranty to his principal the payment of the debt due by the buyer. The phrase *del credere* is borrowed from the Italian language, in which its signification is exactly equivalent to our word guaranty or warranty. *Story's Agency*, 28.

COMMISSION OF DELEGATES, issued under the Great Seal to certain persons, usually lords, bishops, and Judges, to sit upon an appeal to the king in the Court of Chancery, where a sentence was given in any ecclesiastical cause by the archbishop. 25 Hen. VIII., c. 19, repealed by 2 & 3 Wm. IV., c. 92.

COMMISSION TO ENQUIRE OF FAULTS AGAINST THE LAW, anciently sent forth on extraordinary occasions and corruptions.

COMMISSION TO EXAMINE WITNESSES, issued in Chancery suits, where the witnesses reside in the country. For the practice, see Orders 8th May, 1845, 94—110. As to examining witnesses by commission, whether within or without the jurisdiction of the court, see 1 Wm. IV., c. 22.

COMMISSION OF LUNACY, issued out of Chancery to enquire whether a person represented to be a lunatic, he so or not.

COMMISSION-MERCHANT. A factor is commonly said to be an agent employed to sell goods or merchandize, consigned or delivered to him by or for his principal for a compensation commonly called factorage or commission. Hence he is often called a commission-merchant or consignee; and the goods received by him for sale are called a consignment. *Story's Agency*, 28.

COMMISSION OF THE PEACE, issues under the Great Seal for the appointment of justices of the peace.

COMMISSION OF REBELLION, an attaching process, formally issuable out of Chancery, to enforce obedience to a process or decree, but now abolished by the 6th Order of 26 August, 1841.

COMMISSION OF SEWERS, directed to certain persons to see drains and ditches well kept and maintained in the marshy and

fenny parts of England, for the better conveyance of the water into the sea, and preserving the grass upon the land. 13 *Eliz.* c. 9.

COMMISSION TO TAKE ANSWER IN CHANCERY, issued when defendant lives in the country, to swear him to such answer, they are to be made returnable without delay, and a defendant is not to be permitted to crave the common dedimus. 43d Order 8th May, 1845.

COMMISSION TO TAKE UP MEN FOR WAR, issued to press or force men into the Queen's service. *Fost. Rep.* 154.

COMMISSION OF TREATY WITH FOREIGN PRINCES, leagues and arrangements made between states and kingdoms, by their ambassadors and ministers, for the mutual advantage of the kingdoms in alliance.

COMMISSIONER, a person authorised by letters-patent, or other lawful warrant, to examine any matters, or execute any public office, &c. There are many appointed for different judicial purposes, as the commissioners of bankruptcy, insolvency, &c.; and for other purposes, an almost infinite number.

COMMISSORIA LEX, the term applied to a clause often inserted in conditions of sale, by which a vendor reserved to himself the privilege of rescinding the sale, if the purchaser did not pay his purchase money at the time agreed on. *Dig.* 18, tit. 3.

COMMITMENT, the sending a person to prison by warrant or order, either for a crime, contempt, or contumacy.

COMMITTEE, certain persons elected or appointed, to whom any matter or business is referred, either by a legislative body or by any corporation or society.

COMMITTEE OF A LUNATIC, the person to whom the care and custody of a lunatic is committed by the Court of Chancery.

COMMITTITUR PIECE, an instrument in writing on parchment, which charges a person already in prison, in execution at the suit of the person, who arrested him.

COMMODATUM, one of those obligations which are contracted *re*. He who lends to another a thing for a definite time, to be enjoyed and used under certain conditions, without any pay or reward, is called *commodans*; the person who receives the thing is called *commodatarius*, and the contract is called *commodatum*. It differs from *locatio* and *conductio* in this, that the use of the thing is gratuitous. *Dig.* 13, tit. 6; *Instit.* iii. 14, 2.

Commodum ex injuria sui nemo habere debet. Jenk. Cent. 161.—(No person ought to have advantage from his own wrong.)

COMMON, a profit which a man has in the land of another; it derives its name from the community of interest which thence arises between the claimant and the owner of the soil, or between the claimant and other commoners entitled to the same right; all which parties are entitled to bring actions for injuries done to their respective in-

terests, and that both as against strangers and against each other. It is called an incorporeal right, which lies in grant, as if originally commencing on some agreement between lords and tenants, for some valuable purposes, which, by lapse of time, being formed into a prescription, continues, although there be no deed or instrument in writing which proves the original contract or agreement. It differs from a rent, principally in freedom of enjoyment on the one hand, and in freedom from obligation on the other; which the law expresses by the quaint antithesis that it lies not in *render*, but in *prender*. It is also incidentally distinguished by its fruits being always taken in kind, and being in general not otherwise measured than by limiting the instruments of enjoyment. The 2 & 3 Wm. IV., c. 7, § 1, enacts, that after thirty years enjoyment a right of common cannot be defeated by merely showing it commenced within time of memory, and after sixty years' enjoyment the right shall be absolute and indefeasible, unless it appear that the same was taken and enjoyed under some deed or writing.

There are four sorts of common, viz. :—

(1) Common of pasture, limited or unlimited, which is the right of feeding one's beasts in another's land, and this is subdivided into :—

(a) Appendant, which is a privilege belonging to the owners or occupiers of arable land holden of a manor, to put upon its wastes their commonable beasts, viz., horses, kine, or sheep, being such as either plough or manure the soil.

(b) Appurtenant, which arises from no connection of tenure, nor from any absolute necessity, but maybe annexed to lands in other lordships, or extend to other beasts besides such as are generally commonable, as swine, goats, or geese. This can only be claimed by grant, or by title of prescription, which supposes a now forgotten grant.

(c) Because of vicinage or neighbourhood, which takes place where the tenants of two adjoining manors have suffered their cattle to range indiscriminately over both wastes, and it seems that either lord may put an end to it by erecting a fence. In close connection with this, and substantially of the same kind is *common of shack*, or the right of persons occupying lands lying together in the same common field, to turn out their cattle after harvest, to feed promiscuously in that field.

(d) In gross or at large, which is neither appendant nor appurtenant to land, but is annexed to a man's person, by granting it to him and his heirs by deed, or it may be claimed by prescriptive right, as by a parson of a church, or a corporation sole. As to the enclosure of commons, see 41 Geo. III., c. 109, and 6 & 7 Wm. IV., c. 115.

(2) Common of piscary, a liberty of fishing in another's water.

(3) Common of turbary, a license to dig turf upon the ground of another, or in the lord's waste. This is appendant or appurtenant to a house, and not to lands, for turfs are to be burnt in the house, and it may be in gross.

(4) Common of estovers, or necessities, a liberty of taking necessary wood, for the use or furniture of a house, or farm, from off another's estate. The Saxon word *bote*, is used by us as synonymous to the French *estovers*. House-bote, then, is a sufficient allowance of wood to repair, or to burn in the house; which latter is sometimes called fire-bote, plough-bote and cart-bote are wood to be employed in making and repairing all instruments of husbandry; and hay-bote or hedge-bote is wood for repairing of hays, hedges, or fences. 2 *Stephen's Com.* 3.

COMMON BAR, otherwise called a *bar at large* or *blank bar*. If a plaintiff declare in trespass *quare clausum fregit*, for breaking his close in a certain parish, without naming or otherwise describing the close, if the defendant happen to have any freehold land in the same parish, he may be supposed to mistake the close in question for his own, and may therefore plead what is called the common bar, viz., that the close in which the trespass was committed is his own freehold. And then it would be necessary for the plaintiff to new assign, alleging that he brought his action in respect of a different close from that claimed by the defendant as his freehold. But by rule of court (Hilary Term, 4 Wm. IV.) the plaintiff is now bound to designate the close or place in the declaration, by name or other sufficient description. *Step. Plead.* 255.

COMMON BENCH [*banc*, Sax., bench], the ancient name of the Court of Common Pleas, because the pleas of controversies between common persons were there tried and determined. C. B. sometimes stands for this court.

COMMON COUNCIL, the assembly of a city or corporate town, empowered to make by-laws for the government of the citizens.

COMMON DAY OF PLEA IN LAND, an ordinary day in court, as *Octabis Hilarii*, *Quindena Paschæ*, &c. 51 Hen. III., st. 2 & 3.

COMMON FINE, a small sum of money. *Fleta*, l. 7, c. 48.

COMMON HALL, a court in the city of London at which all the citizens, or such as are free of the city, have a right to attend.

COMMON INTENDMENT, ordinary meaning or understanding, according to the plain matter; not strained to any extraordinary or foreign sense.

COMMON LAW [*lex communis*], the meaning of this term is very ambiguous, the expression being used in various senses, according to the objects with which it is contrasted, it being so contradistinguished, sometimes from the statute law, sometimes from the civil and canon law; occasionally from the *lex mercatoria*, and frequently from

equity. Many use it to designate simply a law "common" to all the realm. It is also sometimes adopted in opposition to criminal law, which is certainly erroneous, since the common law includes all the criminal law, which is not of positive statutory origin. "Our English lawyers," observes Hallam (*Midd. Ages*, ii. 465), "prone to magnify the antiquity, like the other merits, of their system, are apt to carry up the date of the common law, till, like the pedigree of an illustrious family, it closes in the obscurity of ancient time: Sir Matthew Hale not hesitating to say, that its origin is as undiscoverable as that of the Nile." It may upon the whole be received as generally true, that our common law traces its origin to the early usages and customs of the aboriginal Britons, and was necessarily augmented, in different ages, by the admixture of some of the laws and usages of the Romans, the Picts, the Saxons, the Danes, and the Normans, who spread themselves over the country: "our laws becoming as mixed as our language."

The common law includes those principles, usages, and rules of action, applicable to the government and security of person and property, which do not rest for their authority upon any express or positive declaration of the will of the legislature.

This at once marks the leading distinction between common law (*lex non scripta*) and statute law (*lex scripta*). The distinction between written and unwritten law is adopted from the Romans, who borrowed it from the Greeks (*Inst. l. 1, t. 2, §§ 3, 9, 10*). In thus distinguishing our own laws into the *scriptas* and *non scriptas*, we use the latter in a peculiar and restrained sense; signifying by it nothing more than that the original institution and authority of the law are not set down in writing, as is the case with acts of Parliament; but that it receives its binding power, as a law, from long and immemorial usage, and universal reception throughout the realm. The authenticity of these customs, rules, and maxims, rests entirely upon reception and usage, as declared by our Judges, who are the sworn depositaries and interpreters of our law. This common law is properly distinguished into three kinds. 1. General customs, or those applicable to and governing the whole kingdom, comprehending the law of nations and the law merchant. 2. Particular customs, i. e., affecting the inhabitants of particular districts. 3. The civil and canon laws, properly denominated the ecclesiastical, military, maritime, and academical laws. 1 *Bl. Com.* 35; 1 *Steph. Com.* 43; *Hale's Hist. of the Com. Law*, c. 3; *Encyc. Americana*, vol. iii. p. 394; *Mackintosh's England*, 274; 1 *Kent's Com.* 447, 468.

COMMON PLEAS, THE COURT OF, one of the three Superior Courts of common law at Westminster. It was detached from the King's Court (*Aula Regis*) for the decision of civil suits, when neither the royal interest, nor any matter savouring of a criminal nature is concerned, as early as the

reign of Richard I., and the 14th clause of Magna Charta enacted, that it should not follow the King's Court, but be held in some certain place, which is at Westminster. This court has exclusive jurisdiction over real actions, and it is now made, by 6 & 7 Vict., c. 18, the appeal court from the revising barristers' courts. None but serjeants at law can practice in this court, when sitting *in banco*. It was suddenly opened to the whole profession, on the 25th April, 1834, by royal warrant. The serjeants, however, after an acquiescence of five years, successfully impeached the validity of the warrant, denying the authority of the Crown to issue it, and insisting upon their right to the monopoly of practice in the court; and, therefore, ever since the 11th January, 1840, the court has remained closed. 10 *Bing.* 571; 6 *Bing.*, N. C., 187, 232; *Chitty's Gen. Prac.* vol. ii. 382.

COMMON PRAYER [*preces publicæ*], the liturgy, or public form of prayer prescribed by the church of England to be used in all churches and chapels, and which the clergy are enjoined to use under a certain penalty. 1 *Eliz.*, c. 2; 13 & 14 *Car. II.*, c. 4.

COMMON WEAL [*bonum publicum*], the common good.

COMMONALTY [*populus, plebs, communitas*], the people of England. 2 *Inst.* 539.

COMMONANCE, the commoners, or tenants and inhabitants, who have the right of common or commoning in open field. *Cowel*.

COMMONS HOUSE OF PARLIAMENT, the lower House, so called, because the Commons of the realm, that is, the knights, citizens, and burgesses returned to Parliament, representing the whole body of the Commons, sit there. See **PARLIAMENT**.

COMMONWEALTH, the social state of a country, without regarding its form of government; also, a republic, or that form of government in which the administration of public affairs is open to all, with few, if any, exceptions.

COMMORANCY, an abiding, dwelling, continuing, or lying in a certain place.

COMMORTH, or **COMORTH** [*cymmorth*, Brit., *subsidiu*m, Lat.], a contribution which was gathered at marriages, and when young priests said or sung the first masses. Prohibited by 26 Hen. VIII., c. 6. *Cowel*.

COMMOTE, half a cantred or hundred in Wales, containing fifty villages. *Stat. Walliæ*, 12 Edwd. I. Also a great seignory or lordship, and may include one or divers manors. *Co. Litt.* 5.

COMMUNE CONCILIUM REGNI ANGLIÆ, the common council of the King and people assembled in Parliament.

COMMUNIA PLACITA NON TENENDA IN SCACCARIO, an ancient writ directed to the treasurer and barons of the Exchequer, forbidding them to hold plea between common persons (i. e., not debtors to the King, who alone originally sued and were sued there,) in that court, where neither of the parties belonged to the same. *Reg. Orig.*

187, now superseded by 2 & 3 Wm. IV., c. 39.

COMMUNI CUSTODIA, an obsolete writ which anciently lay for the lord, whose tenant, holding by knight's service, died, and left his eldest son under age, against a stranger that entered the land, and obtained the ward of the body. *Reg. Orig.* 161; 1 & 2 Car. II., c. 24.

Communis error facit jus. 4 Inst. 240.—(Common error makes a right.)

"It has been sometimes said," observed Lord Ellenborough, in *Isherwood v. Oldknow*, 3 M. & S. 396, "*communis error facit jus* ; but I say, *communis opinio* is evidence of what the law is, not where it is an opinion merely speculative and theoretical, floating in the minds of persons, but where it has been made the groundwork and substratum of practice."

Lord C. J. Denman remarked (*O'Connell v. Reg.*, House of Lords, edited by Leaby), "when, in the pursuit of truth, we are obliged to investigate the grounds of the law, it is plain, and has often been proved by recent experience, that the mere statement and re-statement of a doctrine—the mere repetition of the *cantilena* of lawyers—cannot make it law unless it can be traced to some competent authority, and if it be irreconcilable, to some clear legal principle."

COMMUNIS VIXATRIX, a common (female) brawler, a scold.

COMMUNITY, a society of people living in the same place, under the same laws and regulations, and who have common rights and privileges.

COMMUTATION, conversion ; the change of a penalty or punishment from a greater to a less ; or giving one thing in satisfaction of another, as commuting tithes into a rent charge, &c.

COMPANAGE, all kinds of food, except bread and drink. *Spel.*

COMPANION OF THE GARTER, one of the knights of that most noble order.

COMPANY [from *con* and *pagus*, Lat., one of the same town, or *con* and *parus*, one that eats of the same mess], a society of merchants or other persons joined in a common interest for the purpose of carrying on some commercial or industrial undertaking. Companies have generally been divided into two great classes :—(1) exclusive, or joint-stock companies ; (2) open and regulated companies. *McCulloch's Comm. Dict.*

COMPASS, an instrument used by mariners to point out the course at sea. It consists of a circular box, containing a card or fly, on which are drawn the several points of the compass, and the magnetic needle, which has the property of turning one of its ends to the North pole. The box is covered with glass, to prevent the motion of the card from being disturbed by the wind. The utility of this instrument results from the magnetic virtue of the needle, through which it constantly places itself in a direct line from pole to pole, a small declination peculiar to various parts of the world excepted.

COMPATERNITY, spiritual affinity.

Compendia sunt dispendia. Co. Litt. 305.—(Abbreviations are detriments.)

COMPELATIVUM, an adversary or accuser. *Leg. Athel.*

COMPENSATION, making things equivalent, satisfying or making amends, a reward for the apprehension of criminals ; also a sort of right by set-off, whereby a person who has been sued for a debt, demands that the debt may be compensated with what is owing to him by the creditor, which, in that case, is equivalent to payment.

COMPERTORIUM, a judicial inquest in the civil law, made by delegates or commissioners to find out and relate the truth of a cause. *Paroch. Antiq.* 575.

COMPERUIT AD DIEM (he appeared at the day).

COMPLAINANT, one who urges a suit or commences a prosecution against another.

COMPLICE, one who is united with others in an ill design ; an associate ; a confederate ; an accomplice.

COMPOS MENTIS (sound in mind).

COMPOSITION, an amicable arrangement of a law-suit ; also an agreement or contract between a parson, patron, or ordinary, and the owner of lands, that such lands shall for the future be discharged from payment of tithes, by reason of some land or other real recompense given to the parson in lieu and satisfaction thereof. No real composition however, since the 13 Eliz., c. 10, is, in general, good for any longer term than three lives, or twenty-one years, though made by consent of the patron and ordinary. But by 2 & 3 Wm. IV., c. 100, § 2, every composition for tithes which had then been made or confirmed by the decree of any court of equity in England, in a suit to which the ordinary, patron, and incumbent were parties, and which had not been since set aside or departed from, shall be valid in law. Also an agreement made between an insolvent debtor and his creditors, by which the latter accept a part of their debts in satisfaction of the whole.

COMPOSITIO MENSURARUM, the title of an ancient ordinance for measures not printed.

COMPOST, several sorts of soils or earths and other matters mixed, in order to make a particularly fine kind of mould for fertilizing lands.

COMPOUND INTEREST, interest upon interest, i.e., when the interest of a sum of money is added to the principal, and then bears interest, which thus becomes a sort of secondary principal.

COMPOUNDING, arranging, coming to terms ; compounding felony is where the party robbed not only knows the felon, but also takes his goods again, or other amends, upon an agreement not to prosecute, this offence is denominated *theftbote*, and is punishable with fine and imprisonment. It is no offence to compound a misdemeanour, for the party injured may maintain an action to recover compensation in damages. And

compounding offences only cognizable before magistrates on summary jurisdiction is not within 18 Eliz., c. 5. To take any reward for helping a person to stolen goods, without bringing the offender to justice, is felony; and to advertise a reward for the return of things stolen, or printing or publishing such advertisement, incurs a penalty of 50*l.* by 7 & 8 Geo. IV., c. 29, §§ 58, 59. Penal actions by common informers may be compounded by leave of the court; this leave of the court, however, is not necessary in actions by the party grieved. *Chit. Arch. Prac.* 1040.

COMPRINT, a surreptitious printing of another bookseller's copy, to make gain thereby, which was contrary to common law, and is illegal.

COMPROMISE, an adjustment of claims in dispute by mutual concession, without resorting to the law; also a mutual promise of two or more parties at difference to refer the ending of their controversy to arbitrators. *Compromissarii sunt iudices.* Jenk. Cent. 128. —(Arbitrators are judges.)

COMPTROLLER, one who observes and examines the accounts of collectors of public money.

COMPTROLLER OF THE PIPE, an officer of the Exchequer, who writes out summonses twice every year to the sheriffs, to levy the farms and debts of the pipe, and who also keeps a contrarollment of the pipe. *Scotch Dict.*

COMPURGATOR, one who by oath justifies another's interest. *Du Cange.*

COMPUTO, a writ to compel a bailiff, receiver, or accountant, to yield up his accounts, founded on the Statute of Westminster II., c. 12. It also lies against guardians. *Reg. Orig.* 135. Also a rule to compute is drawn up, when the master is required to ascertain the debt and interest on a bill of exchange or promissory note, &c., at the same time that he taxes the costs on an interlocutory judgment for want of a plea, in order that final judgment may be signed and execution issued thereon.

Cuius, quid sit, non definitur in jure. 2 Buls. 277.—(An endeavour, what it is, is not defined in law.)

CONCEALERS, such as were used to find out concealed lands, i.e., such lands as are privily kept from the King by common persons, having nothing to show for their title or estate therein. 39 Eliz., c. 23.

CONCESSI (I have granted), a word of frequent use in conveyances. By 8 & 9 Vict., c. 106, § 4, the word "grant" in a deed executed after 1st October, 1845, shall not imply any covenant in law, in respect of any tenements or hereditaments, except so far as it may, by force of any act of Parliament, imply a covenant.

Concessio per regem fieri debet de certitudine. 9 Co. 46.—(A concession by the King ought to be made from certainty.)

Concessio versus concedentem latam interpretationem habere debeat. Jenk. Cent. 279.—(A

concession ought to have a liberal interpretation against the party conceding.)

CONCESSIT SOLVERE (he granted and agreed to pay), an action of debt upon a simple contract, and lies by custom in the London and Bristol city courts. 1 Co. n. r.

CONCILIUM, a court; a time and place of meeting.

CONCIONATORES, common-council men, freemen.

CONCLUSION, a binding act; also the end of a pleading, conveyance.

CONCORD, an agreement between parties, who intended the levying of a fine of lands one to the other, how and in what manner the lands shall pass: it was the foundation and substance of the fine taken and acknowledged by the party before one of the Common Pleas' Judges, or by the commissioners in the country; also an agreement made between two or more upon a trespass committed, and is divided into concord executory, and concord executed. *Plowd.* 5, 6, 8.

CONCORDAT, a treaty or public act of agreement between the Pope and any prince, relative to some collation of benefices. *Concordia parvæ res crescunt et opulentia lites.* 4 Inst. 74.—(Small means encrease by concord, and litigations by opulence.)

CONCUBARIA, a fold, pen, or place where cattle lie. *Cowel.*

CONCUBEANT, lying together.

CONCUBINAGE, an exception against her who sues for dower, alleging thereby that she was not a wife lawfully married to the party in whose land she seeks to be endowed, but his concubine. *Brit. c.* 107. As to the right of concubinage allowed to the patriarchs, Jahn (*Bib. Antiq.*, c. x. § 155) thus observes:—"Concubines (some of whom had previously acted in the humble capacity of maid-servants, and others were females who possessed their freedom) were sometimes permanently associated by mutual consent, with individuals of the other sex; but, although this connection was in fact a marriage, and a legitimate one, it was not, nevertheless, confirmed by the ceremonies performed in the case of a wife. The concubine thus associated had a right to claim the privileges of a wife; and it was no longer in the power of her husband to dispose of her by public sale, even if she had previously been his slave. *Deut. xx.* 10—14; *Exodus xxi.* 9—12.

CONCURRENT, acting in conjunction; agreeing in the same act; contributing to the same event; concomitant in agency.

CONDITION, a restraint annexed to a thing, so that by the non-performance, the party to it shall receive prejudice and loss; and by the performance, commodity or advantage; or it is that which is referred to an uncertain chance, which may or may not happen.

There are many kinds of conditions, but the following are the most important.

A condition in a deed, or express, which is joined by express words to a feoffment, lease, or other grant, as if a person make a lease of

lands to another, reserving a rent to be paid at a certain day, upon condition if the lessee fail in payment at the very day, then it shall be lawful for the lessor to enter.

A *condition in law, or implied*, is when a person grants another an office, as that of keeper of a park, steward, bailiff, &c., for term of life; here, though there be no condition expressed in the grant, yet the law makes one, which is, if the grantee do not justly execute all things belonging to the office, it shall be lawful for the grantor to enter and discharge him from his office.

A *condition precedent* is when an estate is granted to one for life, upon condition that if the grantee pay to the grantor a certain sum of money at such a day, then he shall have the fee-simple, in this case the condition precedes the estate in fee, and on performance thereof gains the fee-simple.

A *condition subsequent* is when a man grants to another his estate, &c., in fee, upon condition that the grantee shall pay to him at such a day a certain sum, or that his estate shall cease: here the condition is subsequent, and following the estate, and upon the performance thereof, continues and preserves the same; so that a condition precedent gets and gains the thing or estate made upon condition, by the performance of it; as a condition subsequent keeps and continues the estate by the performance of the condition. *Terms de Ley.*

Condition inherent is such that descends to the heir, with the land granted, &c.

Condition collateral is that which is annexed to any collateral act.

Conditions are likewise *affirmative*, which consist of doing an act; *negative*, which consist of not doing an act; *restrictive*, for not doing a thing; *compulsory*, as that the lessee shall pay rent, &c; *single*, to do one thing only; *copulative*, to do divers things; and *disjunctive*, where one thing of several is required to be done. *Shep. Touch.* 117; *2 Com. Dig.*, tit. "Condition;" *Bac Ab.*, tit. "Condition."

Conditio beneficiæ, quæ statum construit, benignè, secundum verborum intentionem est interpretanda; odiosa, autem, quæ statum destruit, strictè, secundum verborum proprietatem, accipiunda. 8 Co. 90.—(A beneficial condition, which creates an estate, ought to be construed favourably, according to the intention of the words; but a condition which destroys an estate is odious, and ought to be construed according to the letter of the words.)

Conditio dicitur, cum quid in casum incertum, qui potest tendere ad esse aut non esse, confertur. Co. Lit. 201.—(It is called a condition, when that which can tend to be present or not, refers to an uncertain event.)

Conditio illicita habetur pro non adjecta.—(A secret condition is deemed as not annexed.)

Conditio præcedens adimpleri debet priusquam sequatur effectus. Co. Lit. 201.—(A condition precedent must be fulfilled before the effect can follow.)

CONDITIONAL FEE, a quantity of an estate

restrained to some particular heirs, exclusive of others, as to the heirs of a man's body, by which only his lineal descendants were admitted, in exclusion of collateral; or to the heirs male of his body, in exclusion both of collateral and lineal females also. It was called a conditional fee, by reason of the condition expressed or implied in the donation of it, that if the donee died without such particular heirs, the land should revert to the donor. But on the passing of the Statute of Westminster II., commonly called the Statute *de donis*, the Judges determined that the donee had no longer a conditional fee-simple, which became absolute, and at his own discretion the instant any issue was born; but they divided the estate into two parts, leaving in the donee a new kind of particular estate, which they denominated a fee-tail, and vesting in the donor the ultimate fee-simple of the land expectant on the failure of issue, which expectant estate is what we now call a reversion. And hence it is that tenant in fee-tail is by virtue of the Statute *de donis*. *2 Bl. Com.* 112.

CONDITIONAL LIMITATION partakes of the nature both of a condition and a remainder. At the common law, whenever either the whole fee or a particular estate, as an estate for life or in tail was first limited, no condition or other quality could be annexed to this prior estate, which would have the double effect of defeating the estate, and passing the lands to a stranger, for as a remainder it was void, being an abridgment or defeasance of the estate first granted, and as a condition it was void, as no one but the donor or his heirs could take advantage of a condition broken; and the entry of the donor or his heirs, unavoidably defeated the livery upon which the remainder depended. On these principles it was impossible by the old law to limit by deed, if not by will, an estate to a stranger upon any event which might abridge or determine an estate previously limited. But the expediency of such limitations, assisted by the revolution effected by the Statute of Uses, at length established them, in spite of the maxim of law that a stranger cannot take advantage of a condition. These limitations are now become frequent, and their mixed nature has given them the name of conditional limitations; they so far partake of the nature of conditions, as they abridge or defeat the estates previously limited, and they are so far limitations, as upon the contingency taking effect, the estate passes to a stranger. Such is the limitation to A. for life, in tail or in fee, provided that when C. returns from Rome, it shall henceforth remain to the use of B. in fee. *2 Bl. Com.* 156.

CONDITIONS OF SALE, the particular terms set forth in writing, in pursuance of which an estate or interest is to be sold by public auction. Conditions of sale will be construed, so as to endeavour to collect the meaning of the parties, without encumbering them with the technical meaning of words;

for as Lord Hardwicke declared, "there is no magic in words." But the conditions should be accurate, for they cannot be contradicted by parol at the sale; "the babble of the auction room," as Lord Eldon termed it, being inadmissible as evidence, and this, although the purchaser, by the written agreement, bind himself to abide by the conditions and declarations made at the sale. If the conditions require alterations, they should be so altered in writing before the sale. 1 *Sugd. V. & P.* 37.

CONDONATION, a pardoning or forgiving.

CONDUCTIO, a hiring.

CONFEDERACY, a combination of two or more persons to do some damage or injury to another, or to commit some unlawful act.

CONFEDERATION, a league or compact for mutual support, particularly of princes, nations, or states.

CONFESSION, and AVOIDANCE, *plea by*, a plea in bar, admitting the matter of fact in the declaration to be true, but showing some new matter of fact tending to obviate or take off its legal effect. These pleas are distinguished (in reference to their subject-matter) as pleas in justification or excuse, or as pleas in discharge. The former class of pleas shew some justification or excuse of the matter charged in the declaration: those of the latter some discharge or release of the matter. The effect of the former, therefore, is to shew that the plaintiff never had any right of action, because the act charged was lawful, the plea of *son assault demesne* is an example; the effect of the latter to shew, that though he had once a right of action, it is discharged or released by some matter subsequent, as a release, &c. This division applies to pleas only, for replications or other subsequent pleadings in confession and avoidance, are not subject to any such classification. These pleas always conclude with a verification. *Step. Plead.* 229.

CONFESSION BY CULPRIT, the acknowledgment of the offence charged against him when he is asked to plead to the indictment. The criminal may confess the offence openly in court, and submit himself to the censure and judgment of the law, so that it proceeds freely of his own accord, without any threats or extremity used; and sometimes he confesses the indictment to be true, and then he becomes an approver or accuser of others, who are guilty of the same offence whereof he is indicted, and other offences with him. There was a third sort of confession, formerly made by an offender in felony, not in court before the Judge, but before the coroner in a church or other privileged place, upon which the offender, by the ancient law of the land, was to abjure the land. 3 *Inst.* 129.

CONFESSION, *judgment by*, see COGNOVIT.

Confessio, facta in judicio, omni probatione major est. Jenk. Cent. 102.—(A confession made in judgment is greater than all proof.)

CONFESSO, *bill taken pro*, an order which the Court of Chancery makes, when the defendant does not file an answer that the

plaintiff may take such a decree as the case made by his bill warrants. The practice of taking bills *pro confesso* is constantly being altered by New Orders; the last changes are to be found in the General Orders, 8th May, 1845, 76—92.

Confessus in judicio pro judicato habetur, et quodammodo sua sententia damnatur. 11 Co. 30.—(A person confessing a judgment is deemed as adjudged, and, in a manner, is condemned by his own sentence.)

CONFIRMATION, a species of conveyance by which a voidable estate is made valid and unavoidable, or by which a particular estate is increased. The operative words are, "ratified and confirmed;" though, for safety, it is usual and prudent to insert the words, "given and granted." Estates which are void cannot be confirmed, but only those which are voidable. *Watkins' Conv.* 321.

Confirmare est id quod firmum facere prius infirmum fuit. Co. Litt. 295.—(To confirm is to make firm that which was before infirm.)

Confirmare nemo potest priusquam jus ei acciderit. 10 Co. 48.—(No person can confirm before that the right shall fall to him.)

Confirmat usum qui tollit abusum. Moor, 764.—(He confirms a use who removes an abuse.)

Confirmatio est nulla ubi donum præcedens est invalidum. Ibid. 7.—(There is no confirmation where the preceding gift is invalid.)

Confirmatio omnes supplet defectus, licet id quod actum est ab initio non valuit. Co. Lit. 295, b.—(Confirmation supplies all defects, though that which has been done was not valid at the beginning.)

CONFISCATION [*confiscare*, from *fiscus*, Lat., which signifies, metonymically, the emperor's treasure], the condemnation and adjudication of goods or effects to the public treasury, as the bodies and effects of criminals, traitors, &c.

CONFORMITY, *bill of*. When an executor or administrator finds the affairs of his testator or intestate so much involved that he cannot safely administer the estate, except under the direction of the Court of Chancery, he files this bill against the creditors generally, for the purpose of having all their claims adjusted, and a final decree settling the order and payment of the assets. This bill is so called, probably because the executor or administrator in such case undertakes to conform to the decree, or the creditors are compelled by the decree to conform thereto. These suits are not encouraged, because they have a tendency to take away the preference which one creditor may gain over another by his legal diligence. 1 *Story's Eq. Jurisp.* 440.

CONFRAIRIE, a fraternity, brotherhood, or society.

CONFRERES, brethren in a religious house, fellows of one and the same society.

CONFUSION, a mode of extinguishing a debt, in the French law, by the concurrence of two qualities in the same subject, which mutually destroy one another. This may

occur in several ways, as where the creditor becomes the heir of the debtor, or the debtor the heir of the creditor, or either accedes to the title of the other by any other mode of transfer. *Pothier on Oblig.*, by *Evans*, n. 606—609.

Also unnatural intimacy with beasts, or of a man with his daughter-in-law. *Lev.* xviii. 25; and xx. 12.

CONFUSION OF BOUNDARIES, a jurisdiction of equity, concurrent with the common law. The civil law was far more provident than ours upon the subject of boundaries. It considered that there was a tacit agreement or duty between adjacent proprietors to keep up and preserve the boundaries between their respective estates; and it enabled all persons having an interest, to bring a suit to have the boundaries between them settled; and this, whether they were tenants for years, usufructuaries, mortgagees, or proprietors. The action was called *actio finium regundorum*; and if the possession were also in dispute, that might be ascertained and fixed in the same suit, and indeed, was incident to it. Equity adopts this general rule, not to entertain jurisdiction in cases of confusion of boundaries, upon the ground that the boundaries are in controversy; but to require that there should be some equity superinduced by the act of the parties; such as some particular circumstances of fraud, or some confusion, where one person has ploughed too near another, or some gross negligence, omission, or misconduct on the part of persons, whose special duty it is to preserve or perpetuate the boundaries. Where there is an ordinary legal remedy, there is certainly no ground for the interference of equity, unless some peculiar equity supervenes, which a court of law cannot take notice of or protect. 1 *Story's Eq. Jurisp.* 495.

CONFUSION, property by. Where goods of two persons are so intermixed, that the several portions can no longer be distinguished, if the intermixture be by consent, it is supposed that the proprietors have an interest in common, in proportion to their respective shares; but if one wilfully intermix his money, corn, or hay with that of another man, without his approbation or knowledge, or cast gold in like manner into another's melting pot or crucible, our law allows no remedy in such a case, but gives the entire property without any account, to him whose original dominion or property is invaded, and endeavoured to be rendered uncertain without his own consent. 2 *Bl. Com.* 405.

The general rule, that, as against an agent, who has mixed the property of his employer with his own, so as to render it undistinguishable, the whole may, both at law and in equity, be taken to be the property of the employer, is well settled; but the same rule does not, in all cases, hold against the creditors of such agent: for instance, if an agent pay money belonging to his employer into his own banking-house,

and to his general account, this money may not be distinguishable; but should the agent become bankrupt, the whole sum which appears to be due to him from the bankers, will go to his assignees, and his employer can only come in as a general creditor under the fiat. So, if the bankers had any account with the agent by way of set-off, that set-off would equally affect the money paid in to his account, (though being in truth the money of his employer), as it would the agent's own money, supposing the bankers to have no notice, displacing their equity. *Ex parte Townsend*, 15 *Ves.* 470; *Massey v. Banner*, 1 *Jac. & Walk.* 248.

CONGEABLE [*conge*. Fr., leave], lawful, done with permission.

CONGE D'ACCORDER, leave to accord or agree. 8 *Edw. I.*

CONGE D'ESLIRE (leave to choose). The Queen's license or permission sent to a dean and chapter to proceed to the election of a bishop, when any see becomes vacant.

CONGRESS, an assembly of envoys, commissioners, deputies, &c., from different courts, who meet to concert measures for their common good, or to adjust their mutual concerns.

CONGRESS OF THE UNITED STATES OF AMERICA. The assembly of senators and representatives of the several states of North America, forming the legislature of the United States. It consists of a Senate and a House of Representatives, each constituting a distinct and independent branch. The House of Representatives is chosen every second year by the people of the several states, and the voters and electors are required to have the same qualifications as are requisite for choosing the members of the most numerous branch of the state-legislature of the state in which they vote. Each state, however small its population, is entitled to at least one representative; but upon the whole population there cannot be more than one for every 30,000 persons. No person can be a representative who shall not have attained the age of twenty-five years, and have been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen. No other qualifications are required. The senate is composed of two senators from each state, who are chosen by the legislature of the state for six years. They are divided into three classes, so that one third thereof is or may be changed by a new election every second year. No person can be a senator who is not thirty years of age and has not been nine years a citizen of the United States, and is not, when elected, an inhabitant of the state for which he is chosen.

The times, places, and manner of holding elections for senators and representatives are appointed by the state legislatures. Each house determines the rules of its own proceedings, and has power to punish its members for disorderly conduct. Neither house,

during the session of Congress, can, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting. The senators and representatives are entitled to receive a compensation provided by law for their services, from the treasury. They are also privileged from arrest for civil causes during the session.

CONJUGAL RIGHTS, the privilege which husband and wife have of each other's society, comfort, and affection. The suit for restitution of conjugal rights is a matrimonial cause, cognizable in the spiritual courts, which is brought whenever either the husband or wife is guilty of the injury of subtraction, or lives separate from the other without any sufficient reason; in which case the ecclesiastical court will compel them to come together again, if either party be weak enough to desire it, contrary to the inclination of the other. 3 *Step. Com.* 713.

CONJURATIO, an oath.

CONJURATION, a plot or compact made by persons combining by oath to do any public harm; but was more especially used for the having (as was supposed) personal conference with the devil, or some evil spirit, to know any secret or effect any purpose. The difference between *conjuration* and *witchcraft* was said to be, that a person using the one endeavoured, by prayers and invocations, to compel the devil to say or do what he commanded him; the other dealt rather by friendly and voluntary conference or agreement with the devil or familiar, to have his desires served, in lieu of blood or other gift offered. Both differed from *enchantment* or *sorcery*, because the latter were supposed to be personal conferences with the devil, and the former were but medicines and ceremonial forms of words, usually called charms, without apparition. *Cowel*.

CONQUEST, the feudal term for purchase.

(CONSANGUINEO), see **COSINAGE**.

Consanguineus est quasi eodem sanguine natus.

Co. Lit. 157.—(Consanguinity is, as it were, sprung from the same blood.)

CONSANGUINEUS FRATER, a brother by the father's side.

CONSANGUINITY, or **KINDRED**, the connection or relation of persons descended from the same stock or common ancestor. It is either lineal or collateral. Lineal, is that which subsists between persons, of whom one is descended in a direct line from the other as between son, father, grandfather, great grandfather, and so upwards in the direct ascending line; or between son, grandson, great grandson, and so downwards in the direct descending line. Collateral, agree with the lineal in this, that they descend from the same stock or ancestor, but differing in this, that they do not descend one from the other. 2 *Bl. Com.* 202.

CONSCIENCE, courts of, tribunals for the recovery of small debts, constituted by act of Parliament in the city of London, and other towns. See 5 & 6 Wm. IV., c. 94. The

ordinary constitution of these courts, which are generally for causes of debt to the amount of 40s. only, but often to the amount of 5l., is to examine in a summary way, and without jury, by the oath of the parties, or other witnesses, and make such order therein as is consonant to equity and good conscience. 7 & 8 Vict. c. 96; 3 *Step. Com.* 451.

Conscientia dicitur à con et scio, quasi scire cum Deo. 1 Co. 100.—(Conscience is called from *con* and *scio*, to know, as it were, with God.)

Consecratio est periodus electionis; electio est præambula consecrationis. 2 Rol. R. 102.—(Consecration is the termination of election; election is the preamble of consecration.)

CONSENSUAL CONTRACT, marriage.

Consensus est voluntas multorum, ad quos res pertinet simul juncta. Dav. 48.—(Consent is the will of the many, to whom the thing joined at the same time belongs.)

Consensus facit matrimonium.—(Consent constitutes marriage.)

Consent is absolutely requisite to matrimony, and, therefore persons *non compotes mentis*, cannot enter into this, or indeed any other contract.

Consensus non concubitus facit nuptias vel matrimonium, et consentire non possunt ante annos nubiles. 6 Co. 22.—(Consent, and not concubinage, constitutes nuptials or marriage, and they cannot consent before marriageable years.)

Consensus tollit errorem. Co. Lit. 126.—(Consent removes mistake.)

CONSENT, an act of reason accompanied with deliberation, the mind weighing, as in a balance, the good or evil on each side. Every true consent supposes three things: a physical power, a mental power, and a free and serious use of them. Hence it is that if consent be obtained by meditated imposition, circumvention, surprise, or undue influence, it is to be treated as a delusion, and not as a deliberate and free act of the mind. For although the law will not generally examine into the wisdom or prudence of men in disposing of their property, or in binding themselves by contracts, or by other acts; yet it will not suffer them to be entrapped by the fraudulent contrivances, cunning, or deceitful management of those, who purposely mislead them. 1 *Story's Eq. Jurisp.* 186.

Consentientes et agentes pari pœna plectentur. 5 Co. 80.—(Those consenting and those perpetrating are embraced in the same punishment.)

CONSENT-RULE, an instrument in writing, which a defendant in an action of ejectment enters into at the time he enters an appearance, in which he specifies for what purposes he intends to defend, and also undertakes to confess upon the trial, not only the fictitious lease, entry, and ouster, but that he (if he defend as tenant; or if he defend as landlord, then that his tenant,) was at the time of the service of the declaration in the possession of such premises, and that if upon the trial the defendant shall not confess such possession, as well as lease, entry, and ouster,

whereby the plaintiff shall not be able further to prosecute his suit against the defendant, then no costs shall be allowed for not further prosecuting the same, but the defendant shall pay the taxed costs to the plaintiff. The consent-rule is signed by the defendant's attorney, and marked by the master at the time of entering appearance, a copy of it is then delivered with the plea, to the plaintiff's attorney, who signs it, and draws up the rule at the Master's office, a copy of which is annexed to the issue, and served upon defendant's attorney. *Chitt. Arch. Prac.* 750.

CONSEQUENTIAL DAMAGES, those losses or injuries which follow an act, but are not direct and immediate upon it. 1 *Selwyn's Nisi Prius*, 430.

CONSERVANCY COURTS, held by the Lord Mayor of London for the preservation of the fishery on the river Thames.

CONSERVATOR, a protector, preserver, or maintainer; or a standing arbitrator chosen and appointed as a guarantee, to compose and adjust differences that should arise between two parties, &c.

CONSERVATORS OF THE PEACE, officers appointed by the common law for the maintenance of the public peace. Of these, some had and still have this power annexed to other offices which they hold, others had it merely by itself, and were thence called *custodes*, or *conservatores pacis*. Those that were so, *virtute officii*, still continue; but the latter sort are superseded by the modern justices.

The Queen's Majesty is, by her office and dignity royal, the principal conservator of the peace within all her dominions, and may give authority to any other to see the peace kept and to punish such as break it; hence it is called the Queen's peace. The Lord Chancellor, or keeper; the Lord Treasurer, the Lord High Steward of England, the Lord Mareschal, the Lord High Constable of England (when any such officers are in being), and all the Justices of the Court of Queen's Bench, (by virtue of their offices), and the Master of the Rolls (by prescription), are general conservators of the peace throughout the whole kingdom, and may commit all breakers of it, or bind them in recognizances to keep it; the other Judges are only so in their own courts. The coroner is also a conservator of the peace within his own county, as is also the sheriff; so are the constables, tything men, and the like. *3 Step. Com.* 37.

CONSERVATORS OF TRUCE AND SAFE CONDUCTS, officers appointed in every port to hear and determine upon the breaking of truce and safe conducts, and abetting and receiving the truce breakers, which offence was, in affirmance and support of the law of nations, declared to be high treason. It was enacted by 31 Hen. VI., c. 4, that if any of the King's subjects attempt or offend upon the sea, or in any port within the King's observance, against any stranger in amity, league, or truce, or under safe conduct, and

especially by attacking his person, or spoiling him, or robbing him of his goods; the Lord Chancellor, with any of the Justices of either the King's Bench or Common Pleas, may cause full restitution and amends to be made to the party injured. This Statute is in force.

CONSIDERATIO CURIÆ, the judgment of the court.

CONSIDERATION, the price, motive, or matter of inducement of a contract, which must be lawful in itself.

The consideration is the very life of a simple contract or parol agreement, while a specialty does not require a consideration to make it obligatory at law, the law always presuming a sufficient consideration, which the parties, except in special cases, are estopped from denying. The law, then, not only requires a consideration in the case of a simple contract (under which term is included all contracts not under seal, whether oral or written), but that it should be valuable, i.e., a legal consideration emanating from some injury or inconvenience to the one party, or from some benefit to the other party. A good consideration is an equitable consideration, founded upon mere love, affection, or gratitude, and will not support a contract.

Considerations divide themselves into (1) valuable; and (2) insufficient. *Valuable* may be thus classed:—

(a) *Benefit and injury*. The principal requisite, and that which is the essence of every consideration, is, that it should create some benefit to the party promising, or some trouble, prejudice, or inconvenience to the party to whom the promise is made. It is not necessary that the consideration and promise should be equivalent in actual value, for it would be impossible ever precisely to determine whether in a given case the consideration were adequate, without a psychological investigation into the motive of the parties. If the consideration, however, be so insufficient as to "shock the conscience," equity would quash the contract, upon the ground that such great inequality betokens fraud or undue advantage on the one side, or mental incompetency on the other.

(B) *Forbearance* for a certain or reasonable time to institute a suit upon a well founded claim, or even upon one which is doubtful, but not upon one utterly unfounded, is sufficient, since it is a benefit to the one party, and a prejudice to the other. If the time of forbearance be stated, it must be a reasonable time, and an agreement to forbear *per breve aut paululum tempus*, or *pro aliquo tempore* will not be sufficient, inasmuch as the party promising may, in such case, sue immediately after the promise is made.

(γ) *Assignment of a chose in action*, unless it be void on account of maintenance. Assignments of choses in action are void at common law, unless the original debtor expressly promise to pay the assignee, or

unless the assignment be made with his assent, in which case the law implies a promise from him to the assignee, the consideration of which is the discharge of liability to the assignor in respect of the claim. See **CHOSRS IN ACTION**.

(8) *Mutual promises* are concurrent considerations, and will support each other if they be made simultaneously, unless one or the other be void.

(c) *Considerations moving from third persons*. It is a general rule that in cases of simple contract, if one party make a promise to another for the benefit of a third, although no consideration move from such third person, it is binding, and either the party to whom it is made, or the party for whose benefit it is made, may maintain an action upon it.

Insufficient considerations may be divided into:—

(a) *Gratuitous*, which are void for want of consideration; for, however obligatory they may be in morals or in honour, inasmuch as they are not founded upon an injury or deprivation to the promisee, or a benefit to the promisor, they are not regarded by the law as legal and valuable considerations.

(β) *Illegal and impossible consideration*. A contract may be illegal, because it contravenes the principles of the common law, or the special requisitions of a statute. The former illegality exists whenever the consideration is founded upon a transaction which violates public policy or morality:—as a contract to commit, conceal, or compound a crime; a contract for illicit cohabitation; or a contract in fraud of the rights and interests of third parties. The illegality, created by statute, exists, when the act is either expressly prohibited, or when the prohibition is implied from the nature and object of the statute. A contract founded upon an impossible contract is void; for the law will not compel a man to attempt to do that which is not within the limits of human capacity. *Lex neminem cogit ad vana aut impossibilia*.

(γ) *Moral consideration* is not alone a sufficient legal consideration to support either an express, or implied promise; for the law, although it will not suffer any immorality, cannot undertake to enforce every promise, which a man of strict honour and integrity would feel himself bound to fulfil. The performance, therefore, of many purely moral obligations must be left to the good faith of the individual; and it is neither within the province nor the policy of the law to apply a metaphysical standard of morality to the conduct of men in their common relations of life.

(δ) *Executed consideration*. A consideration, in regard to the time when it operates, is either—1st, *executed*, or something already performed before the making of the defendant's promise, which must

be at the request of the promisor, otherwise it will not support a promise; 2d, *executory*, or something to be done after the promise; 3rd, *concurrent*, as in the case of mutual promises; and 4th, *continuing*, i. e., executed in part only. The three last classes are sufficient to support a contract not void for other reasons. *Story on Contracts*, 71.

Since deliberation necessarily accompanies the making and completion of deeds, they are adjudged to bind the party, without examining upon what consideration they were made; for in the deed is a sufficient consideration, viz., the will of the party who made it. A deed, therefore, must be founded upon good and sufficient consideration, not upon an usurious contract, nor upon fraud or collusion, either to deceive purchasers *bona fide*, or just and lawful creditors. The consideration may be either good or valuable; *good*, is such as that of blood, or natural love and affection; *valuable*, such as marriage, money, and the like. 2 *Bl. Com.* 296.

CONSIDERATUM EST PER CURIAM (it is considered by the court).

CONSIGNMENT, the delivery of goods to another for sale or purchase. He who consigns the goods is called the *consignor*, and the person to whom they are sent is called the *consignee*.

Consilia multorum queruntur in magnis. 4 *Inst.* 1.—(The counsels of many are required in great things.)

CONSISTORY COURT, the *prætorium* or tribunal of every diocesan bishop, held in their several cathedrals for the trial of all ecclesiastical causes arising within their probates or administrations. The bishop's chancellor, or his commissary, is the Judge, and from his sentence an appeal lies, by virtue of 24 Hen. VIII., c. 12, to the archbishop of each province respectively.

The ecclesiastical jurisdiction of the Consistory Court of Edinburgh is restricted, and a large portion of its business is transferred to the courts of the sheriffs. 11 Geo. IV., and 1 Wm. IV., c. 69.

CONSOLIDATED FUND, a repository of public money, which now comprises the produce of customs, excise, stamps, and several other taxes, and some small receipts from the royal hereditary revenue, surrendered to the public use; and constitutes almost the whole of the public income of the United Kingdom of Great Britain and Ireland. This fund is pledged for the payment of the whole of the interest of the national debt of Great Britain and Ireland; and besides this, is liable to several other specific charges imposed upon it at various periods by act of Parliament, such as the civil list, and the salaries of the Judges and ambassadors, and other high official persons; after payment of which, the surplus is to be indiscriminately applied to the service of the United Kingdom, under the direction of Parliament. 2 *Step. Com.* 590.

CONSOLIDATING ACTIONS. If two or more actions be brought by the same plaintiff, at the same time, against the same defendant, for cause of action which might have been joined in the same action, the court or a Judge at chambers, if they deem the proceedings oppressive, will, in general, compel the plaintiff, by rule or order, to join (*i. e.*, consolidate) them, and to pay the costs of the application, which may be made at any time after appearance, though before declaration. The rule will seldom be granted in penal actions. If the plaintiff is defeated in one of the actions, he may try another, consolidated in the rule, without applying to the court. Where several actions are brought on the same policy of insurance the court, or a Judge, upon the application of the defendants, will grant a rule or order to stay the proceedings in all the actions but one, the defendants, undertaking to be bound by the verdict in such action, and to pay the amount of their several subscriptions and costs, if the plaintiff should recover, together with such other terms as the court or a Judge may think proper to impose upon them. *Chit. Arch. Prac.* 966.

CONSOLIDATION, in the civil law, the uniting the possession, occupancy, or profits, &c., of land with the property, and *vice versa*; in the ecclesiastical law, the uniting two benefices by assent of the ordinary, patron, and incumbent.

CONSOLS, funds formed by the consolidation (of which word it is an abbreviation,) of different annuities, which had been severally formed into a capital.

Consortio malorum me quoque malum facit. Moor, 817.—(The company of wicked men make me also wicked.)

CONSPIRACY, a combination or agreement between several persons to carry into effect a purpose hurtful to some individual, or to particular classes of the community, or to the public at large; though this is subject to exception in the case where the offence is a felonious one and actually accomplished, the offence of conspiracy, which is a misdemeanour only, being then merged in the felony. Conspiracy has been frequently defined to be, an agreement for an unlawful purpose, or to effect a lawful purpose by unlawful means; but this antithetical definition was questioned in *Reg. v. Peck*, 9 A. & E. 686.

The law has given a very adequate remedy in damages, for preferring malicious indictments or prosecutions against a person, either by an action of conspiracy, which cannot be brought but against two, at the least, and is confined to the particular case where the plaintiff has been acquitted by verdict, upon an accusation of treason or felony, or, which is the only way now known in practice, by an action on the case for a false and malicious prosecution, which may be brought either against a single person or against several, with an allegation that they

conspired together for the purpose. *Schw. Nisi Prius*, tit. "*Malicious Prosecution*;" 3 *Step. Com.* 479.

CONSPIRATORS, those who bind themselves by oath, covenant, or other alliance, that every of them shall aid the other falsely and maliciously to indict persons; or falsely to move and maintain pleas, &c. 33 Edw. I., st. 2. Besides these, there are conspirators in treasonable purposes: as for plotting against the government.

CONSPIRATIONE, the writ that lay against conspirators. *Reg. Orig.* 134; *F. N. B.* 114.

CONSTABLE [*comes stabuli*, in the eastern empire, a superintendent of the imperial stables, or the emperor's master of the horse, who at length, obtained the command of the army], an officer to whom our law commits the service of actually maintaining the peace, and bringing to justice those by whom it is infringed.

These constables are of two sorts, high and petty. The former, called also chief constables, were first ordained by the Statute of Winchester, 13 Edw. I., st. 2, c. 6, are appointed at the courts-leet of the franchise or hundred over which they preside, or in default of that, then by the justices at their special sessions, as directed by 7 & 8 Vict., c. 33, § 8. The petty constables are inferior officers in every town and parish; subordinate to the high constable of the hundred, and first instituted about the reign of Edward III. These petty constables have two offices united in them; the one ancient, the other modern. Their ancient office is that of head-borough, tithing-man, and borsholder; their more modern office is that of constable merely. The proper duty of the high constable seems to be to keep the Queen's peace within the hundred, as the petty constable does within the parish or township. He is also, by various statutes, charged with other duties; such as that of serving of precepts and warrants on certain occasions, and the returning of lists of jurors. An action cannot be brought against a constable for what he does as constable, after the expiration of two years from the execution of the act, or in case of continuing damage, then within one year after such damage shall have ceased, giving one calendar month's notice of action, 5 & 6 Vict., c. 97, §§ 4 & 5, and also making a written demand of a perusal and copy of his warrant, six days at least before the action is commenced.

Petty constables, head-boroughs, tithing-men, and borsholders were formerly all chosen by the jury at the court-leet; or if no court-leet were held, then by two justices of the peace. But it is now provided by 5 & 6 Vict., c. 109, intituled "An Act for the Appointment and Payment of Parish Constables," that for the future no petty constable, head-borough, borsholder, tithing-man, or peace officer of the like description, shall be appointed for any parish, township, or vill, within the limits of that act at any court-leet or tourn, except for the per-

formance of duties unconnected with the preservation of the peace, and with the execution of that act. This act does not apply to the city of London, or the metropolitan police district, or any borough within the Municipal Act, or any parish which levies rates for the payment of constables under 3 & 4 Wm. IV., c. 90, or under any local act, or to the county palatine of Chester. *Special constables* are appointed on particular occasions, 41 Geo. III., c. 78; 1 & 2 Wm. IV., c. 41; and 5 & 6 Wm. IV., c. 43. *County and district constables* were established by 2 & 3 Vict., c. 93, and 3 & 4 Vict., c. 88. *Burns' Justice*, tit. "Constable."

CONSTAT, a certificate which the clerk of the pipe and auditors of the Exchequer make, at the request of any person who intends to plead or move in that court, for the discharge of anything; and the effect of it is, the certifying what appears (*constat*) upon record, touching the matter in question. It is held to be superior to an ordinary certificate, because it does not contain anything but what appears on record. An exemplification of the enrolment of letters-patent, under the Great Seal is called a *constat*. *Co. Litt.* 225.

CONSTITUENT, one who, by his vote, constitutes or elects a member of Parliament.

CONSTITUTION, any regular form or system of government. It is either (1.) *democratic*, when the fundamental law guarantees to every citizen equal rights, protection, and participation, direct or indirect, in the government, such is the constitution of the United States of America, and of some Cantons of Switzerland. (2.) *Aristocratic*, when the constitution establishes privileged classes, as the nobility, and entrusts the government entirely to them, or allows them a very disproportionate share of it, such as was that of Venice. (3.) *Mixed*, to which belong some monarchical constitutions which require the existence of a sovereign, whose power is modified by other branches of government, of a more or less popular cast. Of this kind is the British constitution, consisting of the Sovereign, the House of Lords, and the House of Commons. 1 *Bl. Com.*; *De Lolme on the Constitution*; *Bowyer's Popular Commentary*; *Hallam's Constitutional History*. Also a particular law, ordinance, or regulation made by the authority of any superior; as the novel constitutions of Justinian and his successors; the constitutions of Clarendon; the ecclesiastical constitutions, &c.

Constructio legis non facit injuriam. *Co. Lit.* 183.—(The construction of law does not work an injury.)

CONSTRUCTIVE TREASON. See **TREASON**.

CONSTRUCTIVE TRUST, otherwise called an implied trust. Where an estate is subject to a trust or equitable interest, and a person purchases it for a valuable consideration, with notice of the trust or equitable interest, the estate will be subject to it in the hands of the purchaser; and a person

acquiring an estate as a mere voluntary grantee, even without notice, or as a devisee, will take it subject to every beneficial or equitable lien. The principle has been extended to that equitable lien which a vendor has for any part of his purchase money remaining unpaid.

In the application of the above rule, it has been determined that notice of a bargain and sale not enrolled, of a deed not registered, and of a judgment not docketed, will affect the purchaser. But so far as the operation of a judgment, under the 1 & 2 Vict., c. 110, is concerned, notice of the judgment will not affect a purchaser, unless a minute of such judgment has been left with the senior master of the Court of Common Pleas. 3 & 4 Vict., c. 82, § 2. And a person purchasing with notice of a voluntary conveyance under 27 Eliz., c. 4, will not be bound by it, for the statute makes the voluntary conveyance constructively fraudulent; and the purchaser, buying with notice of a fraud, is not by the means of that notice converted into a trustee. 1 *Sander's Uses and Trusts*, 348.

CONSUETUDINARIUS, a ritual or book, containing the rights and forms of divine offices, or the customs of abbeys and monasteries.

CONSUETUDINIBUS ET SERVICIIS, a writ of right close, which lay against a tenant who deforced his lord of the rent or service due to him. *Reg. Orig.* 159; *F. N. B.* 161. *Consuetudo, contra rationem introducta, potius usurpatio quam consuetudo appellari debet.* *Co. Lit.* 113.—(A custom, introduced against reason, ought to be called rather an usurpation than a custom.)

Consuetudo debet esse certa; nam incerta pro nulla habentur. *Dav.* 33.—(A custom should be certain; for uncertain things are held as nothing.)

Consuetudo est altera lex. 4 *Co.* 21.—(Custom is another law.)

Consuetudo est optimus interpret legum. 2 *Inst.* 18.—(Custom is the best expounder of the laws.)

Consuetudo et communis assuetudo vincit legem non scriptam, si sit specialis; et interpretatur legem scriptam, si lex sit generalis. *Jenk. Cent.* 273.—(Custom and common usage overcomes the unwritten law, if it be special, and interprets the written law if the law be general.)

Consuetudo ex certa causa rationabili usitata privat communem legem. *Lit.* § 169.—(A custom grounded on a certain reasonable cause, supersedes the common law.)

Consuetudo loci observanda est. *Lit.* § 169.—(The custom of a place is to be observed.)

Consuetudo præscripta et legitima vincit legem. *Co. Lit.* 113.—(A prescriptive and legitimate custom overcomes the law.)

Consuetudo, licet sit magnæ auctoritatis nunquam tamen præjudicat manifestæ veritati. 4 *Co.* 18.—(A custom, though it be of great authority, should never, however, prejudice manifest truth.)

Consuetudo manerii et loci observanda est. 6 Co. 67.—(A custom of a manor and place is to be observed.)

Consuetudo regni Angliæ est lex Angliæ. Jenk. Cent. 119.—(The custom of the kingdom of England is the law of England.)

Consuetudo semel reprobata non potest amplius induci. Dav. 33.—(Custom once disallowed cannot be again produced.)

Consuetudo volentes ducit, lex nolentes trahit. Jenk. Cent. 274.—(Custom leads the willing, law compels the unwilling.)

Consuetudo non trahitur in consequentiam. (Custom is not drawn into consequence.)

CONSUL, an officer appointed by competent authority to reside in foreign countries, to facilitate and extend the commerce carried on between the subjects of the country which appoints him, and those of the country or place in which he is to reside. The office appears to have originated in Italy, about the middle of the twelfth century, and was generally established all over Europe in the sixteenth century. British consuls were formerly appointed by the Crown, upon the recommendation of great trading companies, or of merchants engaged in trade with a particular country and place; but they are now directly appointed by government, without requiring any such recommendation, though it, of course, is always attended to when made. The right of sending consuls to reside in foreign countries depends either upon a tacit or express convention.

The duties of a consul, even in the confined sense in which they are commonly understood, are important and multifarious. It is his business to be always on the spot, to watch over the commercial interests of the subjects of the state whose servant he is; to be ready to assist them with advice on all doubtful occasions; to see that the conditions in commercial treaties are properly observed; that those he is appointed to protect are subjected to no unnecessary or unjustifiable demands in conducting their business; to represent their grievances to the authorities at the place where they reside, or to the ambassador of the sovereign appointing him, at the court on which the consulship depends, or to the government at home; in a word, to exert himself to render the condition of the subjects of the country employing him, within the limits of his consulship, as comfortable, and their transactions as advantageous and secure as possible.

The following more detailed exposition of the general duties of a British consul, is taken from Mr. Chitty's work on *Commercial Law*.—

A British consul, in order to be properly qualified for his employment, should take care to make himself master of the language used by the court and the magistracy of the country where he resides, so as to converse with ease upon subjects relating to his duties. If the common people of the port use another, he must acquire that also, that

he may be able to settle little differences without troubling the magistracy of the place for the interposition of their authority; such as accidents happening in the harbour, by the ships of his nation running foul of and doing damage to each other.

He is to make himself acquainted, if he be not already, with the law of nations and treaties, with the tariff or specification of duties on articles imported or exported, and with all the municipal ordinances and laws.

He must take especial notice of all prohibitions to prevent the export or import of any articles, as well on the part of the state wherein he resides, as of the government employing him; so that he may admonish all British subjects against carrying on an illicit commerce, to the detriment of the revenues, and in violation of the laws of either. And it is his duty to attend diligently to this part of his office, in order to prevent smuggling; and consequent hazard of confiscation, or detention of ships, and imprisonment of the masters and mariners.

It is also his duty to protect from insult or imposition British subjects of every description within his jurisdiction. If redress for injury suffered is not obtained, he is to carry his complaint by memorial to the British minister residing at the court on which the consulship depends. If there be none, he is to address himself directly to the court; and if, in an important case, his complaint be not answered, he is to transmit the memorial to her Majesty's Secretary of State.

When insult or outrage is offered by a British subject to a native of the place, and the magistrate thereof complains to the consul, he should summon, and in case of disobedience, may, by armed force, bring before him the offender, and order him to give immediate satisfaction; and if he refuse, he resigns him to the civil jurisdiction of the magistrate, or to the military law of the garrison; nevertheless always acting as counsellor or advocate at his trial, when there is question of life or property.

But if a British subject be accused of an offence alleged to have been committed at sea, within the dominion or jurisdiction of his sovereign, it is then the duty of the consul to claim cognizance of the cause for his sovereign, and to require the release of the parties, if detained in prison by the magistracy of the place on any such accusation brought before them, and that all judicial proceedings against them do instantly cease; and he may demand the aid of the power of the country, civil and military, to enable him to secure and put the accused parties on board such British ship as he shall think fit, that they may be conveyed to Great Britain, to be tried by their proper Judges. If, contrary to this requisition, the magistrates of the country persist in proceeding to try the offence, the consul should then draw up and transmit a memorial to the British minister at the court of that

country; and if that court give an evasive answer, the consul should, if it be a sea offence, apply to the Board of Admiralty in London, stating the case; and upon their representation, the secretary for the proper department will lay the matter before the Sovereign, who will cause the ambassador of the foreign state, resident in England, to write to his court abroad, desiring that orders may immediately be given by that government, that all judicial proceedings against the prisoner be stayed, and that he be released.

It is the duty also of a British consul to relieve all distressed British mariners, to allow them 6d. daily for their support, to send them home in the first British vessels that sail for England, and to keep a regular account of his disbursements, which he is to transmit yearly, or oftener if required, to the Navy Office, attested by two British merchants of the place; this is provided for by positive enactment, 1 Geo. II., s. 2, c. 14, § 12. He is also to give free passes to all poor British subjects wishing to return home, directed to the captains of the Queen's packet boats, or ships of war, requiring them to take them on board.

The consul is not to permit a British merchant ship to leave the port where he resides without her passport, which he is not to grant until the master and crew thereof have satisfied all just demands upon them; and for this purpose, he ought to see the governor's pass of a garrisoned town, or the burgomaster's; unless the merchant or factor to whom the ship was consigned will make himself responsible.

It is also his duty to claim and recover all wrecks, cables, and anchors, belonging to British ships, found at sea by fishermen or other persons, to pay the usual salvage, and to communicate a report thereof to the Navy Board.

The consuls and vice-consuls of her Majesty are, by express enactment (46 Geo. III., c. 98, § 9), empowered to administer oaths in all cases respecting quarantine, in like manner as if they were magistrates of the several towns or places where they respectively reside. It is also laid down, that a consul is to attend, if requested, all arbitrations where property is concerned, between masters of British ships and the freighters, being inhabitants of the place where he resides. *Chitty's Commercial Law*, vol. i. 58—61.

Any individual, whether he be a subject of the state by which he is appointed, or of another, may be selected to fill the office of consul, provided he be approved and admitted by the government in whose territory he is to reside. In most instances, however, but not always, consuls are the subjects of the state appointing them. *McCulloch's Comm. Dict.*

CONSULTA ECCLESIA, a church full or provided for. *Cowel.*

CONSULTARY RESPONSE, the opinion of a court of law on a special case.

CONSULTATION, a writ in the nature of a *procedendo*, whereby a cause, having been removed by prohibition from the ecclesiastical court to the King's court, is returned thither again; for if the Judges of the King's court, upon comparing the libel with the suggestion of the party, find the suggestion false or not proved, and, therefore, the cause to be wrongfully called from the ecclesiastical court, then, upon this consultation or deliberation, they decree it to be returned, whereupon the writ in this case obtained is called a consultation. 24 Edw. 1; *Reg. Orig.* 44. Also a meeting for deliberating or advising with counsel.

CONSUMMATE, *tenant by courtesy*, when a husband, upon his wife's death, becomes entitled to hold her lands in fee simple or fee tail, of which she was seized during the marriage, for his own life, provided he has had issue by her, capable of inheriting.

Contemporanea expositio est optima et fortissima in lege. 2 Inst. 11.—(A contemporaneous exposition is the best and most powerful in law.)

"Great regard," says Sir Edward Coke, "ought, in construing a statute, to be paid to the construction which the sages of the law who lived about the time or soon after it was made, put upon it, because they were best able to judge of the intention of the makers at the time when the law was made."

These four points are to be considered in the interpretation of all statutes, be they penal or beneficial, restrictive of, or enlarging, the common law:—1st, what was the common law before the making of the act; 2ndly, what was the mischief and defect for which the common law did not provide; 3dly, what remedy the Parliament has resolved and appointed to cure the disease of the commonwealth; and, 4thly, the true reason of the remedy; and then the office of the Judges is always to make such construction as shall suppress the mischief and advance the remedy. 3 Rep. 7.

CONTEMPT, a disobedience to the rules, orders, or process of a court, which has power to punish for such offence by attachment. Contempts are either *direct*, which openly insult or resist the powers of the court, or the persons of the Judges who preside there; or *consequential*, which, without such gross insolence or direct opposition, plainly tend to create an universal disregard of their authority. The principal instances of either sort are:—1. Those committed by inferior Judges and magistrates by acting unjustly, oppressively, and irregularly in administering those portions of justice which are entrusted to their distribution, or by disobeying any writs issued out from the superior courts, by proceeding in a cause after it is put a stop to or removed by writ of prohibition, certiorari, error, supersedeas, and the like. 2. Those committed by sheriffs, bailiffs, gaolers, and other officers of the court, by abusing the process of the law, or deceiving persons, or by any acts of oppression, extortion, collusive behaviour, or culpable neglect

of duty. 3. Those committed by attornies or solicitors, who are officers of their respective courts, by gross instances of fraud or corruption, injustice to their clients, or other dishonest practices. 4. Those committed by jurymen in collateral matters, relating to the discharge of their office, such as making default when summoned, refusing to be sworn or to give any verdict, eating or drinking without the leave of the court, and especially at the cost of either litigant. 5. Those committed by witnesses, by making default when summoned, refusing to be sworn or examined, or prevaricating in their evidence. 6. Those committed by parties to any suit or proceeding in a court; as by disobedience to any rule or order made in the progress of a cause, by non-payment of costs, or by non-observance of awards made rules of court. 7. Those committed by any other persons under the degree of a peer, and even by peers themselves, when enormous and accompanied by violence. 4 *Bl. Com.* 283.

CONTENEMENT, a man's countenance or credit, which he has together with, and by reason of, his freehold; or, that which is necessary for the support and maintenance of men, agreeably to their several qualities or states of life.

Contestatio litis eget terminos contradictorios. Jenk. Cent. 117.—(Evidence of a law suit needs contradictory terms.)

CONTINGENT LEGACY, one that is bequeathed to a legatee, at twenty-one, or if when, or provided he shall attain twenty-one, if the legatee die before that age, the legacy lapses. The 33d section of the Wills' Amendment Act, 1 Vic., c. 26, enacts:—"that where any person, being a child or other issue of the testator, to whom any real or personal estate shall be devised or bequeathed for any estate or interest not determinable at or before the death of such person, shall die in the life time of the testator, leaving issue, and any such issue of such person shall be living at the time of the death of the testator, such devise or bequest shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will."

CONTINGENT REMAINDER, an executory remainder limited so as to depend on an event or condition, which may never happen or be performed, or which may not happen or be performed till after the determination of the preceding estate. They are distinguished into four sorts:—

The cases, observes Hayes (*Introd. Conv.* vol. 1, p. 553), classed under these four divisions have, however, one common point of resemblance. Mr. Butler has remarked, that "all contingent remainders appear to be so far reducible under one head, that they depend for their vesting on the happening of an event, which, by possibility, may not happen during the continuance of the preceding estate or at the instant of its de-

termination." In other words, they all depend upon an uncertain event. Of the first sort (viz., "where the remainder depends entirely on the contingent determination of the preceding estate itself, as if A. make a feoffment to the use of B., till C. returns from Rome, and after such return of C., then to remain over in fee"), it may be remarked, that the limitation over is made to depend upon the event of C.'s return from Rome, and that the particular estate happens to be circumscribed by the same event; but this accidental coincidence, as it introduced no peculiar feature into the character of the remainder, cannot, it is conceived, be justly made the basis of a distinct class of contingent remainders. The remainder does not otherwise depend on the contingent determination of the particular estate, than as the event on which the remainder is limited forms also an ingredient in the limitation of the particular estate; but the circumstance of its entering into the constitution of that estate is an independent and indifferent fact. This class, therefore, is not substantially different from the second class (viz., "where some uncertain event, unconnected with, and collateral to, the determination of the particular estate, is, by the nature of the limitation, to precede the remainder; as, if a lease be made to A. for life, and if B. die before A., remainder to C. for life"), which again appears to fall within the fourth class (viz., "where a remainder is limited to a person not ascertained, or not in being at the time when such limitation is made"), for if the remainder be to the first son of A., who has no son, an event unconnected with the particular estate, namely, the birth of a son of A., is to precede the vesting of the remainder. And the only difference seems to be, that the existence of an object of the limitation is involved in the event. The third class (viz., "where a remainder is limited to take effect upon an event which, though it certainly must happen some time or other, yet may not happen till after the determination of the particular estate"), is illustrated by the case of "a lease to J. S. for life, and after the death of J. D., the lands to remain to another in fee;" and in treating of the uncertainty which makes a remainder contingent, it is laid down, that "if there be a lease for life to A., and after the death of J. D., remainder to B. in tail, in that case the remainder to B. is not capable of taking effect in possession during the life of J. D., although the possession should fall by the determination of A.'s estate; but if J. D. chance to die before the determination of the particular estate, then does B.'s remainder, by such event, become capable of taking effect in possession when it shall happen to fall, and is then in the same state as if it had been originally limited without any regard to the death of J. D. This very essential alteration in the nature of B.'s remainder, occasioned by the timely event of J. D.'s death, is the change of a

contingent into a vested *estate*." Here the division founds itself upon the certainty of an event, namely, the death of J. D., but which event, taken simply, is not *the* event whereon the remainder depends, as, indeed, the passage last quoted very clearly shews. In construction of law, the remainder depends upon an *uncertain* event, as every contingent remainder necessarily does. The classification seems, therefore, to be rather verbal than substantial.

We may, perhaps, define, or rather describe, a contingent remainder to be "a legal limitation, adapted to confer, on the happening of an uncertain event, an estate of freehold or inheritance immediately on the natural determination of a preceding legal limitation, contained in the same instrument, of a particular vested estate of freehold or inheritance." 1. It is a *legal* limitation, for there cannot be a remainder, strictly such, of a mere trust. If the fee be vested in A., in trust for B. for life, and after his decease for the heirs of the body of C., and B. die, leaving C., who afterwards dies, leaving an heir of his body, such heir will take by way of future or springing trust. The rule which requires that a remainder shall vest in possession on the determination of the particular estate, or not at all, is a strict rule of *tenure* not applied by analogy to equitable interests. 2. It is *adapted* (that is, having regard to its actual condition) to confer, &c.; for it may have been, in its inception, not a contingent remainder, but a springing use on an executory devise, which, by the vesting of a prior limitation, became a remainder. 3. It is adapted to confer on the happening of an *uncertain* event, &c.; for a future limitation to arise on a *certain* event, cannot be a *contingent* remainder, but must, if valid, either be a vested remainder or be a springing use or an executory devise. A limitation, by way of springing use or executory devise, may await a given *event* without being *contingent*; as in the instance of a substantive limitation by way of use or devise to B., from and after the death of A., for the death of A. is certain, and the time of his death is not material where the limitation is of that irregular species; but a *remainder* cannot, without being contingent, await any given *event*, however certain in itself, for the law tacitly annexes the condition of its happening before the particular estate determines; and it is in this point of view that a remainder, limited to arise upon an event which must happen, involves a contingency. If land be limited to one for life, remainder to the right heirs of J. S., a living person, the remainder is contingent, not because the event of there being a right heir of J. S. is uncertain, but because the event of there being a right heir of J. S., during the continuance of the particular estate, is uncertain; for though it were certain that J. S. would have a right heir, still the remainder would be contingent. It is the uncertainty in point of *time* which makes the contingency; and

every contingent remainder, so considered, depends upon an event which may never happen. It should seem, therefore, that the first branch of the generally received definition of a contingent remainder, which describes it to be "a remainder limited so as to depend on an event which may never happen," comprehends every kind of contingent remainder; and that the superadded clause, "or which may not happen till after the determination of the particular estate," is redundant, at least. 4. It is adapted, &c., to *confer an estate*, &c.; for, in its contingent condition, it is not an estate, but the mere indication of a possible estate. The remaining portion of the suggested definition is merely descriptive of circumstances essential to constitute the limitation—a *remainder*. A particular estate of freehold must vest before there can be a contingent remainder, but all the limitations may, on their creation, be future or executory uses.

But now the 8th section of 8 & 9 Vict., c. 100, enacts, "that a contingent remainder, existing at any time after the 31st day of December, 1844, shall be, and, if created before the passing of this act, shall be deemed to have been, capable of taking effect, notwithstanding the determination by forfeiture, surrender, or merger of any preceding estate of freehold in the same manner, in all respects as if such determination had not happened."

CONTINGENT or FUTURE USES, these are properly uses which take effect as remainders, and in imitation of contingent remainders. Where an estate is limited previously to a future use, and the future use is limited by way of remainder, it is subject to the rules of the common law, which are, that a vested estate of freehold must precede in order to support the remainder, and that a remainder must vest either during the existence of such preceding estate, or *co instanti* that it determines. And herein these contingent or springing uses (for they have been called by both epithets, and without any great inconsistency, although it creates difficulty in regard to their distinctive classification,) differ from executory devises, which latter do not require any particular estate to support them; that by them a fee-simple or other less estate may be limited after a fee-simple, and that a remainder may be limited of a chattel interest, after a particular estate for life created in the same. The following is an example of a future or contingent use: A use to the first unborn son of A., after a previous limitation to A. for life or for years, determinable on his life: for this does not answer to the notion of either a shifting or a springing use. To create a good springing use, it must be limited at once, independently of any preceding estate, and not by way of remainder, for if so, it is then a contingent and not a springing use, and then subject to the laws governing contingent remainders. Thus springing uses are confined within very

narrow limits, and future or contingent uses are placed on exactly the same footing with contingent remainders. Although shifting or secondary uses cannot be classed with future or contingent uses, because of the different modes by which they take effect, yet, as a shifting use, when created, may, in point of limitation, be like a contingent remainder, and shall, in that case, as well as a strict contingent use (which does not take effect in derogation of any other estate), be subject to the same laws.

CONTINUAL CLAIM, abolished by 3 & 4 Wm. IV., c. 27, § 11.

CONTINUANCE, *notice of trial by*, when notice of trial in London or Middlesex has been given, and the plaintiff is not ready to proceed, then, instead of countermanding his notice, he may continue it to the next sitting (not to the adjourned sittings), by giving notice of trial by continuance two clear business days prior to the sittings at which the cause was to have been tried. Sunday cannot be reckoned. It can be given only once in a term. It cannot be given after the plaintiff has countermanded his notice of trial.

CONTINUANCES. The entry of them on issue is abolished by rule of all the courts. H. T. 4 Wm. IV., r. 2, § 2.

CONTINUANDO, a word used in a special declaration of trespass, when the plaintiff would recover damages for several trespasses in the same action; and, to avoid multiplicity of actions, a man may in one action of trespass recover damages for many trespasses, laying the first to be done with a *continuando* to the whole time in which the rest of the trespasses were done; which is in this form, *continuando* (by continuing the trespasses aforesaid, &c., from the day aforesaid, &c.,) until such a day, including the last trespass. *Terms de Ley*.

CONTRABAND [*contra*, Lat., against, and *bando*, Ital., edict], such goods as are prohibited to be imported or exported, bought or sold, either by the laws of a particular state or by special treaties; also a term applied to designate that class of commodities, which neutrals are not allowed to carry during war to a belligerent power.

It is a recognized general principle of the law of nations, that ships may sail to, and trade with, all kingdoms, countries, and states in peace with the princes or authorities whose flags they bear; and that they are not to be molested by the ships of any other power at war with the country with which they are trading, unless they engage in the conveyance of contraband goods. But great difficulty has arisen in deciding as to the goods comprised in this term.

In order to obviate all disputes as to what commodities should be deemed contraband, they have sometimes been specified in treaties or conventions. But this classification is not always respected during hostilities; and it is sufficiently evident that an article which might not be contraband at one time, or under certain circumstances, may become

contraband at another time, or under different circumstances. It is admitted on all hands, even by Mr. Hubner, the great advocate for the freedom of neutral commerce, that every thing that may be made directly available for hostile purposes, is contraband, as arms, ammunition, horses, timber for ship building, and all sorts of naval stores. The greatest difficulty has occurred in deciding as to provisions, which are sometimes held to be contraband, and sometimes not. Lord Stowell has shown that the character of the port to which the provisions are destined, is the principal circumstance to be attended to in deciding whether they are to be looked upon as contraband. A cargo of provisions intended for an enemy's port, in which it was known that a warlike armament was in preparation, would be liable to arrest and confiscation; while, if the same cargo were intended for a port where none but merchant-men were fitted out, the most that could be done would be to detain it, paying the neutral the same price for it as he would have got from the enemy.

The right of visitation and search is a right inherent in all belligerents; for it would be absurd to allege that they had a right to prevent the conveyance of contraband goods to an enemy, and to deny them the use of the only means by which they can give effect to such right. *Vattel*, b. iii., c. 7, § 114. The object of the search is twofold: first, to ascertain whether the ship is neutral or an enemy, for the circumstance of its hoisting a neutral flag affords no security that it is really such; and, secondly, to ascertain whether it has contraband articles, or enemies' property on board. *McCulloch's Com. Dict.*

CONTRACAUSATOR, a criminal; one prosecuted for a crime.

CONTRACT, a deliberate engagement between competent parties, upon a legal consideration to do, or to abstain from doing, some act. In its widest sense it includes records and specialties, but the term is usually employed to designate only simple or parol obligations, which comprehend not only verbal and unwritten contracts, but all contracts not of record nor under seal.

Contracts are divided into three classes:—1st, contracts of record, such as judgments, recognizances, and statutes staple; 2d, specialties, which are under seal, such as deeds and bonds; 3d, simple contracts, or contracts by parol. There is no such fourth class as contracts in writing, distinct from verbal and sealed contracts; both verbal and written contracts are included in the class of simple contracts, and the only distinction between them is in regard to the mode of proof.

Every contract is founded upon the mutual agreement of the parties; when the agreement is formal, and stated either verbally or in writing, it is usually called an *express contract*; when the agreement is matter of inference and deduction, it is called an *implied contract*.

Contracts are also distinguished into executed and executory; *executed*, where nothing remains to be done by either party, and where the transaction is completed at the moment that the agreement is made; as where an article is sold and delivered, and payment therefore is made on the spot; *executory*, where some future act is to be done; as where an agreement is made to build a house in six months; or to do an act on or before some future day; or to lend money upon a certain interest, payable at a future time.

There is also one other distinction, namely, that between entire and severable contracts. An *entire* contract is one, the consideration of which is entire on both sides. The entire fulfilment of the promise by either is a condition precedent to the fulfilment of any part of the promise by the other. Whenever, therefore, there is a contract to pay a gross sum for a certain and definite consideration, the contract is entire. A *severable* contract is one, the consideration of which is, by its terms, susceptible of apportionment on either side, so as to correspond to the unascertained consideration on the other side, as a contract to pay a person the worth of his services so long as he will do certain work; or to give a certain price for every bushel of so much corn as corresponds to a sample. *Chitty on Contracts; Story on Contracts; 1—12; Pothier on Contracts.*

Contractus est quasi actus contra actum. 2 Co. 15.—(A contract is, as it were, act against act.)

Contractus ex turpi causa, vel contra bonos mores, nullus. Hob. 167.—(There is no contract from a base cause, or against good manners.)

CONTRAFACTION, a counterfeiting. *Blount.*

CONTRA FORMAM COLLATIONIS. A writ that issued where a man had given lands in perpetual alms to any lay houses of religion, or to an abbot and convent, or to the warden or master of any hospital and his convent, to find certain poor men with necessities, and do divine service, &c. If they alienated the land, to the disherison of the house and church, then the donor, or his heirs, would bring this writ to recover the lands. *Reg. Orig.* 238; *F. N. B.* 210.

CONTRA FORMAM FEOFFAMENTI, a writ that lay for the heir of a tenant, enfeoffed of certain lands or tenements, by charter of feoffment from a lord, to make certain services and suits to his court, who was afterwards distrained for more services than were mentioned in the charter. *Reg. Orig.* 176; *Old Nat. Br.* 162.

CONTRA FORMAM STATUTI (contrary to the form of the statute, in such case made and provided). The usual conclusion of every indictment, &c., brought for an offence created by statute. 7 Geo. IV., c. 64, § 20.

Contra negantem principia non est disputandum. Co. Lit. 43.—(Against one denying principles there is no disputing.)

Contra non valentem agere nulla currit præ-

scriptio.—(No prescription runs against a person unable to act.)

CONTRA PACEM (against the peace). It is generally necessary, in all indictments whatsoever, to allege that the offence was committed against the peace of our Lady the Queen.

Contra veritatem lex nunquam aliquid permittit. 2 Inst. 252.—(The law never suffers any thing contrary to truth.)

CONTRAMANDATIO PLACITI. A respiting or giving a defendant further time to answer, or a countermand of what was formerly ordered. *Leg. H. I., c. 59.*

CONTRAMANDATUM. A lawful excuse, which a defendant in a suit by attorney alleges for himself, to show that the plaintiff has no cause of complaint. *Blount.*

CONTRAPOSITIO, a plea or answer.

CONTRARIENTS, those who are opposed to the government, but are not either rebels or traitors.

Contrariorum contraria est ratio. Hob. 344.—(The reason of contrary things is contrary.)

CONTRATENERE, to withhold.

CONTRAVENTION, the action founded on the breach of law-burrows. *Scotch Dict.*

Contractatio rei alienæ, animo furandi, est furtum. Jenk. Cent. 132.—(The touching of property not one's own, with an intention of stealing, is theft.)

CONTRIBUTION. Where every one pays his share, or performs his part in any agreement or arrangement. It frequently arises between sureties, who are bound for the same principal, and upon his default, one of them is compelled to pay the money, or to perform any other obligation for which they all became bound: the surety, who has paid the whole, is entitled to receive contribution from all the others for what he has done, in relieving them from a common burthen. Contribution amongst sureties may in general be enforced as well in courts of law as in equity; but in some cases the remedy is more extensive in equity than at law. Thus, suppose there were three sureties in a bond for 3000*l.*, and one of them has been obliged to pay the whole debt, he could *at law* only sue one of the sureties for his third, viz., 1000*l.*, although the other surety had become bankrupt; but in *equity* he might compel the solvent surety to contribute 1500*l.*, the moiety of the entire sum. *Peter v. Rich*, 1 C. C. 321. And the remedy is more complete and effectual in equity when an account and discovery are wanted, or where there are numerous interested parties, which would occasion a multiplicity of actions. And if one of the sureties die, the remedy at law lies only against the surviving parties; but in equity it may be enforced against the representative of the deceased party, and he may be compelled to contribute.

The claim of contribution has its foundation in the clearest principles of natural justice; for as all are equally bound, and are equally relieved, it seems but just that, in

such a case, all should contribute in proportion towards a benefit obtained by all, upon the maxim, *Qui sentit commodum, sentire debet et onus*. And the doctrine has an equal foundation in morals, since no one ought to profit by another man's loss, where he himself has incurred a like responsibility. Any other rule would put it in the power of the creditor to select his own victim; and upon motives of mere caprice or favouritism, to make a common burthen a most gross personal oppression.

Legatees are also compelled to refund and contribute for the payment of debts. In like manner, contribution lies between partners for any excess, which has been paid by one partner beyond his share, against the other partners, if, upon a winding up of the partnership affairs, such a balance appears in his favour; or if, upon a dissolution, he has been compelled to pay any sum for which he ought to be indemnified. It also lies between joint-tenants, tenants in common, and part owners of ships and other chattels, for all charges and expenditures incurred for the common benefit. 1 *Story's Equity*, 393—415.

CONTRIBUTIO FACIENDA, a writ that lay where there were tenants in common, that were bound to do one thing, and one was put to the whole burthen, to compel the rest to make their contribution. *Reg. Orig.* 175; *F. N. B.* 162.

CONTROLLER, an overseer or officer appointed to examine and verify the accounts of other officers.

CONTUBERNIUM, the marriage of slaves, with their master's consent: the children of such marriages were the property of their parents' owners.

CONTUMACE CAPIENDO. Excommunication in all cases of contempt in the spiritual courts is discontinued by 53 Geo. III., c. 127, § 2, and in lieu thereof, where a lawful citation or sentence has not been obeyed, the Judge shall have power, after a certain period, to pronounce such person contumacious and in contempt, and to signify the same to the Court of Chancery, whereupon a writ *de contumace capiendo* shall issue from that court, which shall have the same force and effect as formerly belonged, in case of contempt, to a writ *de excommunicato capiendo*. 2 & 3 Wm. IV., c. 93; 3 & 4 Vict., c. 93.

CONTUMACY, a refusal to appear in court when legally summoned, or disobedience to its rules and orders.

CONVENT, the fraternity of an abbey or priory, as *societas* is the number of fellows in a college.

CONVENTICLE, a private assembly or meeting for the exercise of religion; the word was at first an appellation of reproach to the religious assemblies of Wickliffe in the reigns of Edward III. and Richard II., and is now usually applied to a meeting of dissenters from the established church. As this word in strict propriety denotes an unlawful

assembly, it cannot be justly applied to the assembling of persons in places of worship, which are licensed according to the requisitions of law.

CONVENTIO, an agreement or covenant.

CONVENTION, an extraordinary assembly of the Houses of Lords and Commons, without the assent of, or being called together by the Sovereign, and which can only be justified *ex necessitate rei*, as the Parliament which restored Charles II., and that which disposed of the Crown and Kingdom to William and Mary.

Conventio privatorum non potest publico juri derogare. Wing. 746.—(A convention of private persons cannot affect public right.)

CONVENTIONAL ESTATES, those freeholds not of inheritance or estates for life, which are created by the express acts of the parties, in contradistinction to those which are legal and arise from the operation and construction of law.

CONVENTIONE, a writ for the breach of any covenant in writing, whether real or personal. *Reg. Orig.* 115; *F. N. B.* 145.

CONVENTUALS, religious men united in a convent or religious house. *Cowel*.

CONVENTUAL CHURCH, that which consists of regular clerks professing some order of religion; or of dean and chapter, or other societies of spiritual men.

CONVERSION, where a person finds, or having the goods of another in his possession, applies or converts them to his own use, without the owner's consent, and for which the owner may maintain an action of trover and conversion against him. Refusal to restore the goods is *prima facie* sufficient evidence of a conversion, though it does not amount to a conversion. 10 *Rep.* 56.

CONVEYANCE, an instrument which transfers property from one person to another *inter vivos*, or after the death of the person transferring: the former is accomplished by deed, record, or special custom; the latter by will.

Deeds operate either at common law or by statute.

Common law deeds are *original*, as feoffment, gift, grant, lease, exchange, partition; or *derivative*, as release, confirmation, surrender, assignment. Deeds operating under the Statute of Uses are, a covenant to stand seized to uses, bargain and sale, lease and release (but the lease is now dispensed with), a deed to lead or declare the use of other more direct conveyances, a revocation of uses, being the execution of a power, reserved at the creation of a use, of recalling at a future time the use or estate so created. 2 *Bl. Com. c. xx.*

CONVEYANCERS, persons who employ themselves solely in the preparation of deeds or assurances of property, qualified if he be a barrister, attorney, student, or member of some Inn of Court, duly certificated, *i. e.* paying 12*l.* stamp duty for his license. 55 *Geo. III., c. 184.*

CONVEYANCING in its more precise and

technical sense, it may be considered as the science, and also as the art of alienation. If, by an investigation of the laws of property, we elicit and systematise the principles which govern the disposition, we are then compacting the science. The science of alienation, therefore, may be defined a systematic statement of the principles of alienation. To apply these principles to practice, by means of appropriate instruments or conveyances, constitutes the art of alienation.

Convicia si irascaris, tua divulgas, spreta exolescunt. 3 Inst. 198.—(If you be moved to reproaches, you divulge your own affairs, things slighted grow out of memory.)

CONVICT, a person found guilty of a crime or offence alleged against him, either by a verdict of a jury or other legal decision.

CONVICTION, the act of proving guilty of an offence charged against a party, by a legal tribunal.

Convictum convictio legere est lutum luto porrigere. 1 Buls. 86.—(To cover reproach with reproach, is to heap mud upon mud.)

CONVIVIVUM, the same among the laity as *procuratio* with the clergy, viz., when a tenant, by reason of his tenure, is bound to provide meat and drink for his lord once or oftener in the year. *Blount*.

CONVOCAION, an assembly of the clergy of England, of which there is one in each province, which at present is merely personal. Its province is stated to be the enactment of canon law, subject to the license and authority of the Sovereign, and the examination and censure of all heretical and schismatical books and persons; but from its judicial proceedings an appeal lies to the Queen in council, by 2 & 3 Wm. IV., c. 92. It is held during the session of Parliament, and consists of an upper and a lower house in the province of Canterbury. In the upper sit the bishops, and in the lower the inferior clergy, who are represented by their proctors, and all the deans and archdeacons, in all, 143 divines. In York, the convocation consists of one house only. 2 *Step. Comm.* 541.

CONVOY, ships of war which accompany merchant-men in time of war, to protect them from the attacks of the enemy. There are five things essential to sailing with convoy:—viz. (1) it must be with a regular convoy under an officer appointed by government; (2) it must be from the place of rendezvous appointed by government; (3) it must be a convoy for the voyage; (4) the master of the ship must have sailing instructions from the commanding officer of the convoy; (5) the ship must depart and continue with the convoy till the end of the voyage, unless separated by necessity. *Abbott on Shipping*, pt. iii. c. 3; *Marshall on Insurance*, book i., c. 9, § 5; 43 Geo. III., c. 57. Also a body of troops, which accompany provisions, ammunition, or other property, for protection.

CONUSANCE OF PLEAS, a privilege that a city or town has to hold pleas. See *Cognizance*.

CONUSANT [*connaissant*, Fr.], knowing, or understanding.

COOPERTIO, the head or branches of a tree cut down; though *coopertio arborum* is rather the bark of timber trees felled, and the chumps and broken wood. *Cowel*.

COOPERTURA, a thicket or covert of wood.

COPARCENERS, or **PARCENERS**; where lands of inheritance descend from the ancestor to two or more persons. It arises either by common law or particular custom. By common law: as where a person seised in fee simple or fee tail dies, and his next heirs are two or more females, his daughters, sisters, aunts, cousins, or their representatives, in this case they shall all inherit, and these co-heirs are then called coparceners, or, for brevity, parceners only, and their interest is called an estate held in coparcenary. Parceners by particular custom are where lands descend, as in gavelkind, to all the males in equal degree, as sons, brothers, uncles, &c.

An estate in coparcenary resembles, in some respects, that in joint-tenancy, there being the same unity of title and similarity of interest. But in the following respects they materially differ:—1. Parceners always claim by descent, whereas joint-tenants always claim by the act of the parties. 2. There is no entirety of interest among coparceners, and no survivorship between them. 3. Though the interest of parceners may accrue by the same title, yet they may vest at different periods. 4. There is no necessary equality of interest among them.

This estate may be dissolved by partition (either by deed or decree in equity); by the alienation of one of the parties, which destroys the unity of title; or, by the whole at last descending to, and vesting in, one single person, which brings it to an estate in severalty. 1 *Step. Comm.* 319.

COPARTNERSHIP, the having an equal share.

COPE, a custom or tribute due to the Crown, or lord of the soil, out of the lead-mines in Derbyshire; also a hill, or the roof and covering of a house.

COPIA LIBELLI DELIBERANDA, a writ that lay where a man could not get a copy of a libel at the hands of a spiritual Judge, to have the same delivered to him. *Reg. Orig.* 51.

COPPA, a crop or cock of grass, hay, or corn, divided into titheable portions, that it may be more fairly and justly tithed.

Copulatio verborum indicat acceptationem in eodem sensu. Bac., vol. iv. p. 26.—(The coupling of words shows their acceptation in the same sense.)

COPY [*κόπος*, Gk., labour, according to Junius, because to copy another's writing is very painful and laborious], the transcript or double of an original writing, as the copy of a patent, charter, deed, &c.

COPYHOLD, a base tenure founded upon immemorial custom and usage.

A copyhold estate is a parcel of the de-

mesnes of a manor held at the lord's will, and according to the custom of such manor. The tenant may have similar *quantities of interest* in this tenure, as he might enjoy in freeholds, as an estate in fee-simple, or fee-tail (by particular custom,) or for life, and he may have only a chattel interest, as an estate for years in it. By the custom of some manors, the estate devolves upon the heir on the ancestor's death, and is called a copyhold of inheritance. As far as the quantity and modification of interest are concerned, the tenant's estate partakes of the nature of a freehold, but because it is held by a base instead of a fee tenure, it is called a copyhold. Viewing his estate then, through the medium of its holding or tenure, the tenant is merely a tenant at will; but it is to be remarked, that this tenancy at will must be according to custom, which always regulates the copyholder's interest, upon which interest the lord has no power whatever to encroach. Free copyholds or customary freeholds, however, are held according to the custom of the manor, and altogether independent of the will of the lord, while copyholds of base tenure are held merely at the lord's will. The law certainly considers the freehold to be in the lord (excepting strict customary freeholds, the freehold of which is in the tenant), and the tenant to possess customary estate according to the quantity of interest it is intended he should possess, but the law will protect the copyholder, and will not permit him to be at the will or wayward caprice of the lord.

There are four circumstances necessary to the existence of a copyhold estate. 1. A manor. 2. A court. 3. The lands must be parcel of the manor. 4. They must have been demised or demisable by copy of court roll from time immemorial.

A manor is essentially necessary, for all copyholds must be parcels of manors; and so is a court, for a copyholder has no other evidence of his title than the rolls of the court, which he can inspect and take copies of to use as he may think proper; and the Court of Queen's Bench will order the lord to allow such inspection, and if the lord then refuse, he will be attached. There are two courts incident to every manor, a court baron or freeholders' court, and a customary court, which only relates to the copyholders, who form the homage and transact the necessary business, the lord, or his steward presiding as Judge. Although these courts are essentially distinct, yet they are usually held at the same time, and the same roll serves to record the proceedings of both. In the court baron the suitors are Judges. In the customary court the suitors are assistants to the lord, or his steward, who is the Judge. It is obvious that the lands granted must be parcel of a manor, seeing that a copyhold is part of the demesnes of a manor, but it is not absolutely necessary that the lands should continue parcel of the manor. And because this tenure derives its whole force from custom, the lands must

have been demisable by copy of court roll from time immemorial, for the two pillars, upon which every custom rests, are common usage and existence time out of mind. No copyhold estate can, therefore, be created at the present day.

Copyhold customs are divided into two species. 1. *General*, which extend to all manors in which there are copyholders, and are warranted by the common law, and of which the courts of law take judicial notice, without being specially pleaded, and 2. *Particular*, which prevail in some manors only, and which cannot be specially pleaded. They are construed strictly, and when they are contrary to reason, morality, or justice, or cannot be reduced to a certainty, the courts will not give effect to them.

The following services and incidents are annexed of general custom to copyholds:—

1. Fealty, but the oath of fealty is now generally respited.

2. Suit of court, for every copyholder is bound to attend the lord's court and be sworn of the homage.

3. The copyholder is entitled to estovers, i. e., housebote, hedgebote, and ploughbote, unless restrained by particular custom.

4. He cannot commit any kind of waste, unless there exist a particular custom to warrant it.

5. Copyholds of inheritance are descendible according to the rules of the common law, unless the custom be otherwise, in which case the custom must prevail. The alterations effected by the 3 & 4 Wm. IV., c. 106, are applicable to this species of tenure.

6. Copyholds are alienated by surrender, according to general custom, and they are deviseable.

7. A copyholder, by general custom, may make a lease for a year, and with the lord's license, he may lease for any number of years.

8. Copyholds are liable to all sorts of debts, by 3 & 4 Wm. IV., c. 104, and 1 & 2 Vict., c. 110.

9. The widow of a copyholder, according to particular custom, is entitled to a certain portion of her husband's lands, which varies in quantity, as a half, a third, a fifth, or the whole. It is called her free-bench. It is generally an estate for life, but is forfeited by a second marriage or incontinency. If a widow is detected in incontinency, she loses her free-bench, but, nevertheless, if she come into the Manor Court riding backwards upon a black ram, with his tail in her hand, and repeating certain words, the steward is bound, by particular custom, to re-admit her to her free-bench. The words to be repeated are the following:

Here I am,
Riding upon a black ram,
Like a whore, as I am;
And for my crincum crancum,
Have lost my hincum bancum,
And for my tail's game,
Have done this worldly shame:
Therefore, I pray, Mr. Steward, let me
have my lands again.

The widow's free-bench is barred by a jointure, whether legal or equitable; or by the alienation of the copyhold lands by the husband, or even by an agreement to convey, or by forfeiture, or by a grant of the freehold by the lord to the husband, for then the copyhold is destroyed, or by a devise expressed to be in satisfaction of it.

10. Copyholds, by special custom, are subject to courtesy, and, by the custom of some manors, the husband is entitled to courtesy, though he have no issue by his wife, but it is forfeitable by a second marriage.

11. Upon every descent of a copyhold estate, a sum of money or fine is due to the lord as a consideration, for the renewal of a grant, from the heir, upon his admission. If the heir refuse to be admitted, the lord may seize the estate to his own use. The lord is also entitled to fines upon all voluntary grants, upon the admission of tenants by the courtesy, and free-bench, and indeed upon alienation generally, the only exceptions being in cases of bankruptcy or insolvency, which are provided for by the 6 Geo. IV., c. 16, §§ 64 and 68, and the Insolvent Act of the 1 & 2 Vict., c. 110. No fine is due upon the admission of a remainder-man, unless by special custom, because the admission of the tenant for life is generally deemed the admission of the remainder-man, nor are fines due upon a mere change of the tenant's interest, nor upon a covenant or agreement to surrender, because it is only due upon an actual admittance. Tenants in common pay this fine apportionably, each according to his share. Joint-tenants and coparceners pay a single fine for all. The practice as to the payment of the fine on the admittance of joint-tenants is this: two years' value is paid for the first life, half of that on the second, and a half of that half on the third, and so on, according to the number of the tenants. Joint-tenants succeed each other, by right of survivorship and without a new admittance, and fines are not due but upon admittance, the application, therefore, of the general rule to the case of joint-tenants would be unfair to the lord. By the custom of many manors, fines are due from copyholders on every change of the lord, which happens by the act of God. The *quantum* of all these fines is not to exceed two years value of the lands, which is recoverable by action of debt.

12. Besides a fine, a heriot is due to the lord on his tenant's death, though he be only a tenant for life, provided he be a *legal* and not an *equitable* tenant. It is usually the best beast or *averium*, it is sometimes the best chattel, as a jewel or a piece of plate, it must be a personal chattel. But no heriot is due upon the death of a married woman, because she can have no chattels. Heriots are in some manors commuted to a customary composition in money, but it must be an indisputably ancient custom.

Copyholds are forfeited to the lord of the manor, and not to the Crown, unless by the express words of an act of Parliament, by the

tenant being attainted of high treason or felony; also by his attempting to alienate his estate by any mode which is contrary to custom, or by committing any kind of waste, by disclaiming the tenure, by refusing to perform the services.

Copyholds may be destroyed, suspended, or enfranchised, i. e., converted into free tenure, in several ways.

1. If the copyholder surrender his estate to the rightful lord, to the use of the lord.

2. If a copyholder release all his right and interest to the lord.

3. If the lord convey the freehold of the copyhold to a stranger, and the copyholder release to the stranger.

4. If the lord convey to the copyholder the land for an estate of freehold, or even for a term of years.

5. There are several cases in which copyholds are suspended only for a certain time, and not absolutely extinguished; thus, where a copyholder marries the lady of the manor, this suspends the copyhold during the marriage, but does not extinguish it. So where a copyholder becomes king, the copyhold is suspended, for the king could not perform the services, being inconsistent with his royalty; but after his death, the next person entitled to the copyhold, shall, if a subject, hold by copy.

6. The efforts of the legislature have been, of late years, directed to these customary estates, which are, in fact, the remains of feudal slavery; they are embarrassing and unnecessary blots upon the juridical system of property. Their chief inconveniences, as set forth by the Real Property Commissioners, in their third report, are the multiplicity and uncertainty of the different manorial customs on which the tenure depends—the check to agricultural improvements occasioned by the state of the law with respect to timber and minerals—the liability to arbitrary fines—the numerous payments due to stewards on account of fees, and the vexatious and oppressive character of heriots. It is manifest, then, that where the complexity which must always belong to the legal institutions of a civilized country is wantonly aggravated by the admission of several concurring systems, serious mischiefs are likely to arise from the ignorance or forgetfulness of practitioners, and even of Judges, however carefully selected.

In order, then, to diminish these grievances, and to facilitate enfranchisement, the 4 & 5 Vict., c. 35, amended by the 6 & 7 Vict., c. 23, has been passed.

The legislature, not adopting the compulsory conversion of copyhold into freehold, a measure deemed to be attended with insuperable difficulties, addresses itself to two objects—first, giving effect to agreements for commutation of manorial burthens and restrictions, and improving the tenure; second, facilitating voluntary enfranchisements.

These acts establish a copyhold commis-

sion, composed of three commissioners, who act as a board, in order to carry the provisions into execution.

1. Commutation. By commutation, the most burdensome incidents affecting customary tenure, as rents, fines, and heriots, and the lord's right in timber, and also (if so expressed) in mines and minerals, may be commuted, by agreement, for corn rents or fixed fines, or for pieces of land, part of the copyholds commuted. The commutation shall be compulsory on all parties interested in the manor, or the lands of the manor, excepting the lord, who must agree, provided three-fourths of the tenants in number and value consent, at a meeting called for that purpose, by which the remaining fourth will be bound; and provided that all ecclesiastical and other corporations and patrons of livings, interested in such manors, be parties to the agreement, and that it be afterwards confirmed by the copyhold commissioners. It also authorises voluntary commutation to be, in like manner, made between the lord of a manor and any one or more of the tenants (whatever may be the amount of their respective interests), so as to be binding, after confirmation by the commissioners, on those parties, and on all other persons connected with them in title, but notice must be given to those next in remainder, reversion, or expectancy, of an estate of inheritance, and not parties to the agreement, and such persons may show cause against the proposed arrangement before the copyhold commissioners.

Besides the commutation, the agreement may also fix a scale of fees, to be payable in future to the steward, but without prejudice to the rights of stewards now holding for life, or during good behaviour, or holding under such circumstances as to lead to a reasonable expectation that their tenure would be of that description. From the 1st January next following the confirmation, the lands of the manor should be discharged from the payment of all the lord's rents, fines (except in certain cases, or nominal fine), and heriots, and from the lord's right of timber, and every other right which may be the subject of commutation; and instead thereof there shall be payable a rent charge, variable according to the price of corn, or a fixed fine, or a piece of land shall be conveyed to the lord. And, after the final commutation, the customary modes of descent are to cease, and the lands to descend and be subject to dower or courtesy, in like manner as freehold lands, with a saving, however, of gavelkind in the county of Kent, which is to remain unaltered by these acts.

2. Enfranchisement is purely voluntary, being neither compulsory upon the lord, nor on any of the tenants. It may be either general, partial, or individual, and in consideration of a gross sum of money, payable forthwith, or at a future time, or of a corn rent charge, or of a conveyance of lands, parcel of the same manor as the land enfranchised.

Any lord of any manor, whatever may be his estate or interest, may, with the consent of the commissioners, enfranchise all or any of the lands holden of his manor for any of the considerations above-mentioned, as shall be agreed on; and any tenant, whatever may be his estate or interest, may accept of such enfranchisement.

Whenever so many as six tenants, or all the tenants of a manor, shall agree with the lord to effect an enfranchisement, it may be effected by a schedule of apportionment, which may either be prepared by the parties or the steward, and such schedule shall state the sums to be paid for enfranchisement, and the periods of the payment, and the compensation, if any, to the steward, and all other matters requisite: it is exempted from stamp duty.

But when the enfranchisement shall not be entered into by all the tenants of a manor, or their number shall be less than six, or whatever may be their number, if the parties shall think fit, an enfranchisement may be effected, with the commissioners' consent, by such conveyance as would be adopted if the lord were seized in fee-simple, but such conveyance is not exempted from stamp duty, as the schedule is.

It is, however, provided, that whenever the customary estate of any party shall be less than a fee-simple in possession, notice shall be given to the person entitled to the next estate of inheritance, in remainder or reversion, and that in case that person expresses his dissent, the commissioners shall withhold their consent until, on further enquiry, they shall be satisfied that the agreement is not fairly open to objection.

The effect of enfranchisement is that the lands become freeholds, but with the saving of all commonable rights and beneficial limitations. Consult *Watkins* or *Scriven on Copyholds*.

COPYRIGHT, an incorporeal chattel, being the exclusive privilege of printing and reprinting his own original work, which the law allows an author. The 5 & 6 Vict., c. 45, provides, that the copyright of every book. (which includes every volume, part, or division of a volume, pamphlet, sheet of letterpress, sheet of music, map, chart, or plan, separately published), which shall be published in the lifetime of its author, shall endure for his natural life, and for seven years longer; or if the seven years shall expire before the end of forty-two years from the first publication, it shall endure for such period of forty-two years; and that when the work is posthumous, the copyright shall endure for forty-two years from the first publication, and shall belong to the proprietor of the author's manuscript. The remedy given for a book unlawfully printed within the British dominions, is an action on the case, to be commenced within twelve calendar months. Equity will also afford relief by special injunction, to restrain the progress of the injury. The title of the work must be entered at Stationers' Hall. As to

those unlawfully re-printed in any place out of the British dominions, and imported into the United Kingdom, they may be seized, as forfeited, by any officer of the custom or excise, and the offenders are liable to penalties. A copyright is assignable by an instrument in writing, which does not require to be under seal.

The sole liberty of printing and publishing lectures is secured to lecturers by 5 & 6 Wm. IV., c. 65; dramatic pieces, and musical performances are protected by 3 & 4 Wm. IV., c. 15, and 5 & 6 Vict., c. 45, §§ 20, 21; engravings and prints by 8 Geo. II., c. 13; 7 Geo. III., c. 38; and 17 Geo. III., c. 57; sculptures, models, copies, and casts by 38 Geo. III., c. 71, and 54 Geo. III., c. 56; and designs for articles, whether of ornament or utility, by 5 & 6 Vict., c. 100.

CORAAGE, an extraordinary imposition, upon some unusual occasion, and seems to be of certain measures of corn. *Blount*.

CORAM NON JUDICE (not in presence of a Judge). When a cause is brought and determined in a court, whereof the Judges have not any jurisdiction, then it is said to be *coram non judice*, and void.

CORAM PARIBUS (before his peers).

CORD OF WOOD, a quantity of wood eight feet long, four feet broad, and four feet high.

CORDINER, a shoe-maker.

CORETES [*cored*, Brit.], pools, ponds, &c.

CORIUM FORISFACERE, where a person was condemned to be whipped, anciently the punishment of a servant. *Corium perdere*, the same. *Corium redimere*, to compound for a whipping.

CORN-RENT [the word *corn* is found in all the Teutonic dialects]. It was created by 18 Eliz., c. 6, by which it was directed that one third of the old rent then paid on college leases, should for the future be reserved in wheat or malt, reserving a quarter of wheat for each 6s. 8d., or a quarter of malt for every 5s.; or that the lessees should pay the same according to the price that wheat or malt should be sold for in the market next adjoining to the respective colleges, on the market day before the rent becomes due. 2 Bl. Com. 322.

CORNAGE [*cornu*, Lat., a horn], a kind of tenure in grand serjeanty, the service of which was to blow a horn when any invasion of the Scots was perceived; and by this tenure many persons held their lands northward, about the place commonly called the Picts' Wall. This old service of horn-blowing was afterwards paid in money, and the sheriffs accounted for it under the title of *Cornagium*. *Camd. Brit.* 609.

CORNARE, to blow in the horn.

CORODY, a sum of money or allowance of meat, drink, and clothing due to the Crown from an abbey or other religious house, whereof he was founder, towards the sustentation of such an one of its servants as is thought fit to receive it. It differs from a pension, in that it was allowed towards the maintenance of any of the King's servants in

an abbey; a pension being given to one of the King's chaplains, for his better maintenance, till he may be provided with a benefice. *F. N. B.* 250.

CORODIO HABENDO, a writ to exact a corody of an abbey or religious house. *Reg. Orig.* 264.

CORONA MALA, the clergy who abused their character.

CORONARE FILIUM, to make one's son a priest. *Homo coronatus*, was one who had received the first tonsure, as preparatory to superior orders, and the tonsure was in form of a corona, or crown of thorns. *Cowel*.

CORONATION OATH. At the public and solemn ceremony of crowning or investing a prince with the insignia of royalty, in acknowledgment of his right to govern the kingdom, the prince swears reciprocally to the people to observe the laws, customs, and privileges of the kingdom, and to act and do all things conformably thereto. The oath is as follows:—"I solemnly promise and swear to govern the people of this United Kingdom of Great Britain and Ireland, and the dominions thereto belonging, according to the statutes in Parliament agreed on, and the laws and customs of the same; to cause law, in justice and mercy, to be executed in all my judgments; to the utmost of my power to maintain the laws of God, the true profession of the gospel, and the Protestant reformed religion established by the law; to preserve unto the bishops and clergy of this realm, and the churches committed to their charge, all such rights and privileges as by law do or shall appertain unto them or any of them." After this, the King or Queen, laying his or her hand upon the holy gospels, shall say "The things which I have before proclaimed, I will perform and keep, so help me God," and then shall kiss the book.

CORONATORE ELIGENDO, the writ issued to the sheriff, commanding him to proceed to the election of a coroner.

CORONATORE EXONERANDO, a writ for the removal of a coroner, for a cause which is to be therein assigned, as that he is engaged in other business, or incapacitated by years or sickness, or has not a sufficient estate in the county, or lives in an inconvenient part of it. The 25 Geo. II., c. 29, makes extortion, neglect, or misbehaviour, causes of removal.

CORONER, a very ancient officer at the common law, so called because he has principally to do with pleas of the Crown, or such wherein the Sovereign is more immediately concerned. There are usually four or six appointed for every county of England. They are chosen for life by all the freeholders in the county court. By 7 & 8 Vict., c. 92, coroners may be appointed for districts within counties, instead of the county at large. And the Crown and certain lords of franchises, having a charter from the Crown for that purpose, may appoint coroners for certain precincts or liberties by their own mere grant, and without

election. In every borough having a separate quarter sessions, a coroner is to be appointed, with exclusive jurisdiction within the borough. 5 & 6 Wm. IV., c. 76, §§ 62, 63. County coroners may appoint deputies by 6 & 7 Vict., c. 83.

The office and power of a coroner are either (1.) *judicial*, and consists principally in enquiring when any person is slain or dies suddenly or in prison, concerning the manner of his death. A jury is empanelled and inquisition must be found with the concurrence of at least twelve of them. Provisions have been recently made to prevent it from being quashed on account of certain technical defects; 6 & 7 Vict., c. 12; 6 & 7 Vict., c. 83. The inquisition must be had *super visum corporis*, for if the body be not found, the coroner cannot sit, except by virtue of a special commission issued for that purpose. If any be found guilty of murder or other homicide by such inquisition, the coroner is to commit them to prison for further trial, and is also to enquire concerning their lands, goods, and chattels, which are forfeited thereby; and in case of death by misadventure, he must enquire whether any deodand has accrued to the Queen, or the lord of the franchise, by his death, and must certify the whole inquisition under the seals of himself and jurors, together with the evidence thereon, to the Court of Queen's Bench or the next assizes. Another branch of the coroner's office is to enquire concerning shipwrecks and treasure trove. (2.) *Ministerial*. He is the sheriff's substitute in executing process, when the sheriff is interested in the suit, or of kindred to either plaintiff or defendant. *Jervis on Coroners; Com. Dig., Officer*, 9. This officer is first mentioned in King Athelstan's charter to Beverly, in 925. **CORONER'S COURT**, a tribunal of record, where he holds his enquiries.

CORPORAL, an epithet for any thing that belongs to the body, as corporal punishment. A corporal oath is so called, because the party taking it is obliged to lay his hand on the Testament.

CORPORATE NAME, when a corporation is erected, a name is always given to it, or supposing none to be actually given, will attach to it by implication, and by that name alone it must sue and be sued, and do all legal acts, though a very minute variation therein is not material, and the name is capable of being changed (by competent authority) without affecting the identity or capacity of the corporation. But some name is the very being of its constitution; and though it is the will of the sovereign that erects the corporation, yet the name is the knot of its combination, without which it could not perform its corporate functions. The name of incorporation, says Coke (10 Rep. 28), is as a proper name, or name of baptism, and, therefore, when a private founder gives his college or hospital a name, he does it only as a god-father, and by the same name the king baptizes the incorporation. 3 Step. Com. 174.

CORPORATION, or **BODY POLITIC**, artificial persons established for preserving in perpetual succession certain rights, which, being conferred on natural persons only, would fail in process of time. It is either *aggregate*, consisting of many members, or *sole*, consisting of one person only. It is also either *spiritual*, erected to perpetuate the rights of the church; or *lay*, subdivided into *civil*, erected for many temporal purposes, and *eleemosynary*, to perpetuate founders' charities. They may be created either by royal charter, prescription, or act of Parliament. Their powers are to maintain perpetual succession, to act in their corporate capacity like an individual, to hold lands subject to the Statutes of Mortmain, to have a common seal, and to make bye-laws; which last power, in spiritual or eleemosynary corporations, may be executed by the Queen or the founder. Their duty is to answer the ends of their institution. To enforce which, they may be visited: spiritual, by the ordinary; lay, by the founder or his representatives; viz., the civil, by the Queen (who is the *fundator incipiens* of all), represented in the Queen's Bench; the eleemosynary, by the endower (who is the *fundator perficiens* of such), or by his heirs or assigns. They may be dissolved by act of Parliament, by the natural death of all the members, by surrender of their franchises, by forfeiture of their charter.

The whole political system is made up of a concatenation of various corporations, civil, religious, social, and economical. A nation itself is the great corporation, comprehending all the others, the powers of which are exercised in legislative, executive, and judicial acts. 1 Bl. Com. chap. xviii.

CORPOREAL HEREDITAMENT, such thing as affects the senses, such as may be seen and handled by the body; in short, *land*.

CORPSE. The superstitious opinion that a dead body bleeds when touched by its murderer, is founded neither in law nor reason. Carpovius says, he has seen a body bleed in the presence of one not guilty, and not bleed when the guilty were present. *Hargrave, vol. iv. p. 283*.

CORPUS CHRISTI DAY, a feast instituted in 1264, in honour of the sacrament. 32 Hen. VIII., c. 21.

CORPUS CUM CAUSA, a writ issuing out of Chancery to remove both the body and record, touching the cause of any man lying in prison. *F. N. B.* 251.

Corpus humanum non recipit aestimationem. Hob. 59.—(A human body is not susceptible of appraisement.)

CORPUS JURIS CANONICI. See **CANON LAW**.

CORPUS JURIS CIVILIS. The three great compilations of Justinian, the Institutes, the Pandects, and the Code, together with the Novellæ, form one body of law, and were considered as such by the glossatores, who divided it into five volumina. The Pandects were distributed into three

volumina, under the respective names of *Digestum Vetus*, *Infortiatum*, and *Digestum Novum*. The fourth volume contained the first nine books of the *Codex Repetitæ Prælectionis*. The fifth volume contained the *Institutes*, the *Liber Authenticorum* or *Novellæ*, and the three last books of the *Codex*. The division into five volumina appears in the oldest editions; but the usual arrangement now is the *Institutes*, *Pandects*, the *Codex*, and *Novellæ*. The name *Corpus Juris Civilis* was not given to this collection by Justinian, nor by any of the glossatores. Savigny asserts that the name was used in the twelfth century: at any rate, it became common from the date of the edition of D. Gothofredus of 1604. *Smith's Dict. of Antiq.*
CORRECTION, *House of*, a prison for the reformation of petty offenders.

CORRECTOR OF THE STAPLE, a clerk belonging to the staple, to write and record the bargains of merchants there made. 27 Edw. III., cc. 22, 23.

CORREDIUM, **CONREDIUM**. See **CO-BODY**.

Corruptio optimi est pessima.—(Corruption of the best is worst.)

CORRUPTION OF BLOOD, an affection growing to the state of a man and his issue, where he was attainted of treason or felony by means whereof his blood was said to be attainted, and his property escheated. By 54 Geo. III., c. 145, it is provided, that no attainder for felony, except for *treason* or *murder*, shall extend to the disinheriting of any person, nor to the prejudice of the right or title of any person or persons, other than the right or title of the offender, during his natural life only; and that it shall be lawful to every person, to whom the right or interest of any lands, tenements, or hereditaments after the death of such offender, should or might have appertained if no such attainder had been, to enter into the same. By 3 & 4 Wm. IV., c. 106, that when the person, from whom the descent of any land is to be traced, shall have had any relation, who having been attainted shall have died before such descent shall have taken place, then such attainder shall not prevent any person from inheriting such land who would have been capable of inheriting the same, by tracing his descent through such relation, if he had not been attainted, unless such land shall have escheated, in consequence of such attainder, before 1st January, 1834. By 4 & 5 Wm. IV., c. 23, that no land, chattels, or stock vested in any person upon any *trust*, or by way of *mortgage*, or any profits thereof, shall escheat or be forfeited by reason of the attainder or conviction for any offence of such trustee or mortgagee, but shall remain in such trustee or mortgagee, or survive to his co-trustee, or descend or vest in his representative, as if no such attainder or conviction had taken place.

CORSELET [*corpusculum*, Lat.], a little body.

CORSEPRESENT [*corps*, present, Fr.], a mortuary, thus termed, because when a mor-

tuary became due on the death of a man, the best or second best beast was, according to custom, offered or presented to the priest, and carried with the corse.

CORSNED BREAD [*panis conjuratus*, Lat., the morsel of execration.] It was a kind of superstitious trial used among the Saxons, to purge themselves of any accusation, by taking a piece of barley bread and eating it with solemn oaths and execrations, that it might prove poison, or their last morsel, if what they asserted, or denied, were not punctually true. Abolished.

Probably, this ceremony was in imitation of the water of jealousy among the Jews. The power was given to the husband who suspected his wife of infidelity, of exacting from her in the temple or tabernacle, what may be termed the ordeal oath, *Nam. v. 11—31*. To this oath were attached such dreadful penalties, that a person really guilty, certainly could not take it without betraying her criminality by some indications, unless she possessed the extremity of hardihood. Moses appears to have substituted this oath and the ceremonies attending it, instead of an ancient and pernicious custom, of which some traces still remain in Africa. *Oldendorp's Geschichte der Mission*, § 266. The Talmudists state (*Sota c. 9*), that this law was abrogated as much as forty years before the destruction of Jerusalem. The reason they assign for it is, that the men themselves were at that period generally adulterers, and that God would not fulfil the horrid imprecations of the ordeal oath upon the wife alone, while the husband was guilty of the same crime. *Jahn's Bib. Antiq. c. x. § 159*.

CORTES, the assembly of the States of Spain or Portugal, answering in some measure, to the Parliament of Great Britain.

CORTIS, a court or yard before a house. *Blount*.

CORTULARIUM, or **CORTARIUM**, a yard adjoining to a country farm. *Old Records*.

COSDUNA, custom or tribute.

COSENAGE, or **COSINAGE**, kindred, consinship. Also a writ that lies where the *tresail*, i. e., the father of the *besail*, or great grandfather, being seised of lands and tenements in fee at his death, and a stranger enter upon the heir and abates, then shall his heir have this writ. *F. N. B. 221*.

COSENING, an offence, where anything is done deceitfully, whether belonging to contracts or not, which cannot be properly termed by any special name.

COSHERING, a feudal custom, whereby the lords may lie and feast themselves and their followers at their tenants' houses, &c.

COSMUS [*κοσμος*, Gk.], clean. *Blount*.

COSTARD, an apple.

COSTERA, sea coast.

COSTS [*expensæ litis*, Lat.], expences incurred in litigation or professional transactions, consisting of money paid for stamps, &c. to the officers of the court, or to the counsel, attornies, and solicitors, for their fees. &c.

Costs in actions or suits are either between *attorney and client*, being what are payable in every case to the attorney or solicitor, by his client, whether he ultimately succeed or not; or between *party and party*, being those only, which are allowed in some particular cases, to the party succeeding against his adversary, and these are either *interlocutory*, given on various motions and proceedings in the course of the suit or action, or *final*, allowed when the matter is determined.

Neither party was entitled to costs at common law, but the Statute of Gloucester (6 Edwd. I., c. 1), gives costs to a victorious plaintiff, but which is somewhat restrained by subsequent statutes, in order to check trifling or vexatious litigation; and the 2 & 3 Hen. VIII., c. 6, and 4 Jac. I., give costs to a victorious defendant. The civil law maxim, *victus victori in expensis condemnatus est*, is now recognised.

There were many cases of vexatious proceedings, in which the legislature formerly provided, that the party in fault should be punished by the payment to his adversary of double or treble costs: but all such provisions are now repealed, and the adversary is entitled only to a full and reasonable indemnity, to be taxed by the proper officer, which taxation shall, as in ordinary cases, be subject to review. Bills of costs for conveyancing business are now subject to taxation by the Attornies and Solicitors' Act.

Although, in equity, the person who fails in the suit must be deemed liable to the costs, yet the costs rest entirely in the breast of the court, for the *prima facie* claim to costs may be rebutted by the particular circumstances of the case, and it is for the court to decide whether those circumstances are or are not sufficient to rebut the claim.

The 7 Geo. IV., c. 64, § 22, gives costs in criminal cases. *Tidd's Prac.*, tit. *Costs*; *Chit. Arch. Prac.* 1138.

COSTS DE INCREMENTO, costs of increase, i. e., those extra expences incurred, which do not appear on the face of the proceedings, such as witnesses' expences, fees to counsel, attendances, court fees, &c.

COTARIUS, a cottager, who held in free socage, and paid a stated firm or rent in provisions or money with some occasional personal services.

COTE, or **COT**, cottage.

COTELLUS, or **COTERIA**, a small cottage, house, or homestall.

COTRELLUS, a servile tenant, who held in mere villenage, and his possession, issue, and goods were disposable at the lord's pleasure.

COTESWOLD [*cote* and *wold*, Sax.], a place where there is no wood.

COTLAND, and **COTSETHLAND**, land held by a cottager, whether in socage or villenage.

COTSETHLA **COTSETLE**, the little seat or mansion belonging to a small farm.

COTSETHUS, a cottage holder, who, by servile tenure, was bound to work for the lord. *Cowel*.

COTTAGE, a little habitation without lands belonging to it. 15 Geo. III., c. 32.

COTUCA, coat armour.

COTUCHANS, boors, husbandmen.

COUCHER, or **COURCHER**, a factor who continues abroad for traffic; also the general book wherein any corporation, &c., register their particular acts.

COTERIE, a fashionable association; or a knot of persons forming a particular circle. The origin of the term was purely commercial, signifying an association, in which each member furnished his part, and bore his share in the profit and loss.

COUCHANT, lying down; squatting.

COUNCIL, an assembly of persons for the purposes of concerting measures of state or municipal policy.

COUNSEL, or **COUNSELLOR**, a person retained by a client to plead his cause in a court of judicature; a barrister; an advocate.

COUNT [*conte*, Fr., narrative], a particular charge in a declaration or indictment, setting forth the cause of complaint. It is also used, in a real action, as the name for the whole declaration.

COUNTEE, or **COUNT** [*comte*, Fr.], the most eminent dignity of a subject before the Conquest. He was *præfectus* or *præpositus comitatûs*, and had the charge and custody of the country; but this authority is now vested in the sheriff. 9 *Rep.* 46.

COUNTENANCE, credit; estimation.

COUNTER, the name of two prisons in London, the Poultry Counter, and Wood Street Counter, now consolidated into one new-built-prison, for the use of the city, to confine debtors, peace-breakers, &c.

COUNTER-DEED, a secret writing, either before a notary or under a private seal, which destroys, invalidates, or alters a public one.

COUNTERFEIT, that which is made in imitation of something, but without lawful authority, and with a view to defraud by passing the false for the true.

COUNTERMAND, where a thing formally executed is afterwards by some act or ceremony, made void by the party who first did it; it is either actual by deed, or implied by law. A plaintiff who has given notice of trial, may countermand it in writing six days before the time mentioned in the notice of trial (unless it was a short notice,) in country cases, and two days in town cases.

COUNTERMARK, a sign put upon goods already marked; also the several marks put upon goods belonging to several persons, to shew that they must not be opened, but in the presence of all the owners or their agents.

COUNTERPART, the corresponding part or duplicate; the key of a cipher. When the several parts of an indenture are interchangeably executed by the several parties, that part or copy which is executed by the grantor is usually called the original, and the rest are counterparts; though, of late, it is most frequent and better for all the parties to execute every part, which renders them all originals.

COUNTERPLEA, a kind of replication; an incidental pleading; diverging from the main series of the allegations. When the tenant in

any real action, tenant by the curtesy or dower, in his answer and plea vouches any one to warrant his title, or prays in aid of another who has a larger estate, as of him in reversion, &c. : or where one that is a stranger to the action comes and prays to be received to save his estate ; then that which the demandant alleges against it, why he should not be admitted, is called a counter-plea : it is a replication to *aid prier*, and is called counterplea to the voucher. But when the voucher is allowed, and the vouchee comes and demands what cause the tenant has to vouch him, and the tenant shows his cause, whereupon the vouchee pleads anything to avoid the warranty, that is termed a counterplea of the warranty. *Terms de Ley.*

COUNTER-ROLLS, the rolls which sheriffs have with the coroners, containing particulars of their proceedings, as well of appeals as of inquests, &c. *3 Edw. I., c. 10.*

COUNTER-SECURITY, a security given to one who has entered into a bond or become surety for another.

COUNTER-SIGN, the signature of a secretary or other subordinate officer to any writing signed by a principal or superior, to attest the authenticity of it.

COUNTIES CORPORATE, certain cities and towns, some with more, some with less territory annexed to them, to which, out of special grace and favour, the Kings of England have granted the privilege to be counties of themselves, and not to be comprised in any other county, but to be governed by their own sheriffs and other magistrates, so that no officers of the county at large have any power to intermeddle therein. The *3 Geo. I., c. 5*, for the regulation of the office of sheriffs, enumerates twelve cities and five towns, which are counties of themselves, and which have, consequently, their own sheriffs. The cities are London, Chester, Bristol, Coventry, Canterbury, Exeter, Gloucester, Litchfield, Lincoln, Norwich, Worcester, York. The towns are Kingston-upon-Hull, Nottingham, Newcastle-upon-Tyne, Pool, Southampton. As they constitute no part of the counties at large in which they are locally situate, so they had formerly, in general, no share in voting for the members to serve for those counties in Parliament. Twelve of the number are now expressly included within their respective counties as far as regards the right of election for knights of the shire. They are Canterbury, Chester, Coventry, Gloucester, Kingston-upon-Hull, Lincoln, London, Newcastle-upon-Tyne, Poole, Worcester, York, Ainsty, and Southampton ; to these is added Carmarthen in South Wales. *Schedule G., 2 Wm. IV., c. 45, s. 17.*

COUNTING-HOUSE, the room appropriated by merchants, traders, and manufacturers to the business of keeping their account-books, ledgers, &c.

COUNTING-HOUSE OF THE QUEEN'S HOUSEHOLD, usually called the Board of Green Cloth, where sit the lord-steward, and

treasurer of the Queen's house, the comptroller, master of the household, cofferer, and two clerks of the Green Cloth, &c., for daily taking the accounts of all expences of the household, making provisions and ordering payment. *39 Eliz., c. 7.*

COUNTORS [*contours*, Fr.], serjeants-at-law, whom a man retains to defend his cause and speak for him in court, for their fees. *1 Inst. 17.*

COUNTY [*comté*, Fr., *comitatus*, Lat.], a shire, or portion of country comprehending a great number of hundreds. England is divided into forty counties or shires, Wales into twelve, and Scotland into thirty. It seems probable that the realm was originally divided into counties with a view to the convenient administration of justice, the judicial business of the kingdom having, in former times, been chiefly dispatched in local courts held in each different county, before the sheriff as its principal officer, whose duties now are more ministerial than judicial. The larger counties are now subdivided, for purposes of parliamentary representation, and each portion forms a separate county (so far as this purpose is concerned), and sends its own representative knights to the House of Commons. *2 Wm. IV., c. 45.*

COUNTY COURT, a tribunal incident to the jurisdiction of a sheriff. It is not a court of record, but may hold pleas of debt or damages under the value of 40s. These inferior courts have over some causes, as trespasses for goods, a jurisdiction exclusive of the superior courts, by the Statute of Gloucester, *6 Edw. I., c. 8*. In causes, generally, if it appear that the sum for which the action is brought is less than 40s., the proceedings will be stayed, unless it appear that the debt is not recoverable in any county court, or in any local court of requests. Proceedings are removable here into a superior court, by *recordari facias loquelam*, or writ of false judgment. In this court are tried issues joined in a superior court, provided the cause of action is under 20l., and there is no difficult question of law or fact to be determined. Outlawries of absconding offenders are here proclaimed ; and also election of knights of the shire, coroners, &c., takes place. *3 Step. Com. 395.*

COUNTY PALATINE [*palatium*, Lat., a court]. There are two of these counties—Durham and Lancaster, the former is such by immemorial custom, the latter was created by Edward III. The Bishop of Durham, and the Duke of Lancaster have royal power within these respective counties. They might pardon treasons, murders, and felonies, appoint all Judges and magistrates, all writs and indictments ran in their names, and offences were said to be done against *their* peace, and not *contra pacem domini regis*. The *1 W. 4, c. 70*, abolished the Court of Session of the county palatine of Chester, and subjected the county in all things to the jurisdiction of the superior courts at Westminster. The *4 & 5 W. IV., c. 62*, regulated and made conformable

the practice and proceedings in civil actions in the Court of Common Pleas at Lancaster, in most particulars, to those of the superior courts; and the 2 Vict., c. 16, has made similar provisions with regard to the court of pleas at Durham.

The counties palatine are now in the hands of the Crown; the jurisdiction of Durham is now vested, as a separate franchise and royalty, in the Crown, by 6 & 7 Wm. IV., c. 19. Lancaster was vested in the Crown by Henry IV., separated, indeed, from the other possessions of the Crown in order and government, but united in point of inheritance.

COUNTY RATE, an imposition levied on the occupiers of lands, and applied to many miscellaneous purposes; among which the most important are those of defraying the expenses connected with prisons, reimbursing to private parties the costs they have incurred in prosecuting public offenders, and defraying the expenses of the county police. 2 & 3 Vict., c. 93.

COUNTY SESSIONS. They are the general quarter sessions of the peace for each county, which are held four times a year, viz., in the first week (on some day fixed by the magistrates) after the 11th of October, the 28th of December, the 31st of March, and the 24th of June, in every year, provision being made to prevent the April sessions clashing with the spring assizes. The general quarter sessions for the county of Middlesex are remodelled by 7 & 8 Vict., c. 71, which requires two sessions to be held monthly, — the general quarter sessions being the first of these, held in the months of January, April, July, and October; and the general sessions being the second or adjourned sessions, held in the months of February, May, August, and November; and such other sessions as shall be fixed by the magistrates at the first sessions held in December. The 11th § abolishes the sessions for the city of Westminster. County general quarter sessions have both a criminal and civil jurisdiction. The 5 & 6 Vict., c. 38, has abridged their criminal jurisdiction, prohibiting them from trying any treason, murder, or capital felony; any offence punishable with transportation for life; and a long catalogue of offences, specified in the act, such as misprision of treason, political offences, offences against religion, perjury, and subornation of perjury; bribery, forgery, bigamy, abduction; setting fire to growing crops, woods, heaths, &c.; endeavouring to conceal the birth of a child; offences against the insolvent and bankrupt laws; administering unlawful oaths; blasphemous and seditious libels; conspiracies and combinations; stealing, injuring, or destroying legal records and documents, testamentary papers and wills. Their civil business is generally as a court of appeal, extending over penal convictions, orders of justices, matters connected with the administration of the poor laws, vagrant laws, the highways, &c. 3 Burn's Justice, 973.

COURIER [*courir*, Fr., to run], an express messenger of haste.

COURTACIER, a horse courser. 2 Inst. 719.

COURTESY, see CURRESY.

COURT [*curia*, Lat., *cour*, Fr., *koert*, Dut.], the Queen's palace or mansion; also a place where justice is administered. In every court there must be at least three constituent parts, the *actor*, or plaintiff, who complains of an injury done, the *reus*, or defendant, who is called upon to make satisfaction for it; and the *judex*, or judicial power, which is to examine the truth of the fact, to determine the law arising upon that fact, and if any injury appear to have been done, to ascertain, and by its officers, to apply the remedy. It is usual in the superior courts to have attorneys or solicitors, and advocates or counsel, as assistants. Courts are either of *record*, where their acts and judicial proceedings are enrolled in parchment for a perpetual memory and testimony, and they have power to fine and imprison, and a writ of error may be brought upon their judgments; or, *not of record*, as those generally of a private man, which the law will not entrust with any discretionary power over the fortune or liberty of the subject; their proceedings are neither enrolled nor recorded; they cannot hold pleas of matters cognizable at the common law, unless under the value of 40s., nor of any forcible injury whatsoever, nor have any process to arrest the person of the defendant; a writ of false judgment lies to reverse their decisions. It does not follow, however, that a court which is not of record must be an inferior court. The equity jurisdiction of the High Court of Chancery is said to be in strictness a court not of record; but the dignity of this court precludes a writ of false judgment, when sitting as a court of equity; and as it is not a court of record, no writ of error can be brought to rectify its decrees, the proceeding for this purpose is by appeal to the House of Lords. The instances in which this court sits as a court of common law are very rare, but, whenever this does occur, as it is then a court of record, a writ of error lies from its judgments. 3 Bl. Com. 23. For a description of the several courts, public or private, general or special, consult the initial letter of the particular title of every court, e. g., Court of Admiralty, see ADMIRALTY.

The several species, however, of courts of justice have been thus classed. —

I. General jurisdiction (common law and equity), comprehending the Court Baron, the Hundred Court, the County Court, the Court of Exchequer, the Court of Common Pleas, the Court of Queen's Bench, the Court of Chancery, the Court of Exchequer Chamber, the House of Peers, the Courts of Assize and Nisi Prius, the Judicial Committee of the Privy Council, the Court of Bankruptcy, and the Court of Insolvency.

II. Ecclesiastical, military, and maritime, comprehending the Archdeacon's Court, the Consistory Court, the Court of Arches, the Court of Peculiars, the Prerogative Court,

the Court of Chivalry, and the Court of Admiralty.

III. Special jurisdiction, comprehending the Court of *Piepoudre*, the Forest Courts, the Court of Sewers, the Court of Policies of Assurance, the Court of the Marshalsea, the Palace Court, the Court of the Duchy chamber of Lancaster, the Courts of the Counties Palatine, the Courts of the Stannaries, the Borough Courts, the Courts of Requests, or Courts of Conscience, the University Courts.

COURT-LANDS, domains or lands kept in the lord's hands to serve his family.

COUSENAGE, see COSENAGE.

COUTHUTLAUGH [*couth*, Sax., knowing, and *utlaugh*, an outlaw], a person who willingly and knowingly receives an outlaw, and cherishes or conceals him; for which offence such a person underwent the same punishment as the outlaw himself. *Bract*.

COVENABLE, convenient or suitable.

COVENANT [from a Hebrew word, meaning a dissection or cutting up, because victims were anciently sacrificed when a covenant was entered into], an agreement, convention, or promise of two or more parties by deed in writing, sealed and delivered, by which either of the parties pledges himself to the other that something is either done or shall be done, or stipulates for the truth of certain facts. He who thus promises is called the covenantor; and he to whom it is made the covenantee. A covenant being part of a deed is subject to the general rules for the exposition of such instruments: as, first, to be always taken most strongly against the covenantor, and most in favour of the covenantee; secondly, to be taken according to the intent of the parties; thirdly, to be construed *ut res magis valeat quam pereat*; fourthly, when no time is limited for its performance it must be done in reasonable time. If the covenantor covenant for himself and his heirs, it is then a covenant real, and descends upon the heirs, who are bound to perform it provided they have assets by descent; if he covenant also for his executors and administrators, his personal assets, as well as his real, are likewise pledged for the performance of the covenant, but the executors and administrators are bound by every covenant, without being named, unless it is such a covenant as is to be performed personally by the covenantor, and there has been no breach before his death. Covenants for title are frequently termed real covenants, they are usually, that the vendor is seized in fee, has power to convey, for quiet enjoyment by the purchaser, his heirs and assigns, that the land shall be holden free from incumbrances, and for further assurance. These five covenants are separate and distinct, but the first and second of them are synonymous, for if a person be seized in fee, he has a power to sell, but the converse of this proposition is not universally true. No particular technical words are requisite, for any words or form of expression which

import an agreement or show a party's concurrence with the performance of a future act will suffice. A covenant to do a thing, which upon the face of it appears to be prejudicial to the public interest, or otherwise contrary to law, is absolutely void, so is an impossible covenant, if the impossibility existed at the time of making it.

A covenant is either express or implied,—it subsists either in law or in fact. An express covenant, which is one in fact, is evidenced by deed; an implied covenant, or one in law, is that which the law implies, though not expressed in words. Express covenants are taken more strictly than implied. All covenants for the benefit of the estate run with the land, so that he who has the one is subject to the other; they bind those who come in by act of law, as the personal representatives, as well as those who come in by the act of the parties. As to what covenants shall be construed to be precedent or not, it has been laid down that the dependence or independence of covenants must be collected from the sense and meaning of the parties; and that in whatever order covenants may stand in a deed, their precedency must depend on the order of time which the intent of the transaction requires.

Covenants are inherent, that tend to the support of the land or thing granted, or are collateral to it; affirmative, or negative; executed, or that which is already done; executory, or that which is to be done.

There are cases in which equity will relieve against a forfeiture incurred by breach of covenant, when full compensation can be made; but this indulgence is not willingly extended beyond the case of a money payment.

The construction of covenants is the same in equity as at law; but the performance (which is at least as material) may differ in the one court to what may be enforced in the other. At law, a covenant must be strictly and literally performed; in equity, it must be substantially performed, according to the true intent of the parties, so far as circumstances will admit; but if by unavoidable accident, if by fraud, by surprise or ignorance, not wilful, parties have been prevented from executing it literally, a court of equity will interfere, and if compensation can be made, will give relief. Lord Eldon said, in *Iggulden v. May*, 9 Ves. 333, "though it is clear the construction of a covenant must be the same in law and in equity, I can conceive a number of cases in which, admitting the operation to be the same in law and in equity, a court of equity would reform the covenant and introduce another covenant; of which it might be equally predicated, that the construction should be the same in law and equity." *Shep. Touch.* 160; *Bac. Abr.*, Covenant (G); *Com. Dig.*, Covenant (F); *Vin. Abr.*, Covenant (O).

COVENANT, action of, a species of the *ex contractu* actions, and lies where a party claims damages for breach of covenant, which is, in fact, a promise under seal.

COVENANT TO STAND SEIZED TO USES, an innocent and voluntary assurance, operating under the Statute of Uses, and by non-transmutation of possession; i. e., it does not transfer the seisin to another to raise the use in the covenantee, but that seisin remains in the covenantor, he standing seized to the use of the covenantee. It must be by deed, and not by parol, and made by a person seized of lands or tenements, and consequently cannot embrace an equity, right, or contingency, though it may be of a reversion or vested remainder, for the reversioner or remainder-man is in the seisin. It must be in consideration of marriage or blood, for a covenant to stand seized to the use of a stranger would be void. It must not be for a money consideration, for that would be a bargain and sale. But it is not necessary that the consideration of blood be expressed, for if a person covenant to stand seized to the use of his wife, son, and the like, it will be sufficient, as the consideration would be apparent. Love and affection to an illegitimate child are not sufficient considerations to raise a use; *a fortiori*, long acquaintance, and familiar intercourse, are not. It is not settled what degree of relationship is necessary to support this assurance; the kindred between second cousins would perhaps be sufficient, if the fact were noticed in the instrument. The consideration of this conveyance is the foundation of it; a conveyance in the form of, and void as a grant, feoffment, or release, may still take effect as a covenant to stand seized.

The only essential difference between a covenant to stand seized to uses and a bargain and sale, setting aside the external formalities required to the validity of the latter, consists in the nature of the consideration; and hence the same deed may operate for the benefit of different parties, both as one and the other; as, if "A. covenant that in consideration that B. is his son, he shall have the land for life, and after his death, in consideration that C. has given him 100*l.*, that he shall have it in fee." The enrolment gives such solemnity to a bargain and sale that it is said to be an estoppel; but this is not to be understood in the same sense in which an operation by estoppel is attributed to a fine or feoffment, so as to affect property afterwards acquired, but merely that the validity of the deed cannot be denied. *Sanders on Uses and Trusts*, vol. ii. p. 96; *Watkin's Conveyancing*, 331.

COVENANT, writ of, abolished by 3 & 4 Wm. IV., c. 27, § 36. 1 *Stephen's Com.* 516.

COVERT-BARON, said of a wife who is under the protection of her husband.

COVERTURE, the condition of a woman during marriage, because she is then under the cover, influence, and protection of her husband. The effect of coverture, as to the wife's person, is that it belongs of right to her husband, though, should he abuse this right, the wife may have security of the peace against him. As to her property, all free-

holds of which she is seized at the time of marriage or afterwards, vest in the husband and wife during coverture, in right of the wife, and the husband is entitled to the profits and has the sole control and management, but cannot convey or charge the lands for any longer period than while his own interest continues. She can convey with her husband's concurrence, by any of the ordinary modes of assurance, duly acknowledged, as directed by the Fines and Recoveries' Act. As to her inheritable realty, the husband becomes, under certain circumstances, tenant by the courtesy, if he outlive his wife, and by the 32 Hen. VIII., c. 28, he and his wife may together make leases of her lands of inheritance, so as to bind her or her heirs after his interest in the property has determined. As to the wife's terms of years, and other chattels real, they belong to the husband, and may be taken in execution for his debts, and should he survive her, they are absolutely his; but if he make no disposition of them, and she survive him, they then belong to her. The husband becomes generally the absolute owner of his wife's personal chattels (except her *paraphernalia*), and her choses in action (provided he reduce them into possession). The wife, when acting in *autre droit* as executrix, is then independent of her husband. And marriage settlements, and separate provisions modify, of course, his common law rights, according to the particular conventions of the parties. As a general rule, she is incapable of entering into any contracts, except for necessities, and of suing and being sued. Coverture protects her from criminal prosecution, except in cases of treason, murder, manslaughter, or cases of mere misdemeanour, or crimes committed in her husband's absence. 2 *Step. Com.* 298.

COVIN, a secret conspiracy or agreement of two or more persons to injure or defraud some other person.

CRASPICE, and **CRASPISCE**, i. e., *crassus piscis*, probably the grampus. *Anc. Inst. Eng.*

CRASSA NEGLIGENTIA, gross neglect.

CRASTINO, the morrow after.

CRAVARE, to impeach.

CRAVEN [derived by Skinner from *crave*, as one that craves or begs his life: perhaps it comes originally from the noise made by a conquered cock], a word of disgrace and obloquy, pronounced by either champion, in the ancient trial by battle, proving recreant, i. e., yielding. His condemnation was *amittere liberam legem*, i. e., to become infamous, and not to be accounted *liber et legalis homo*, being supposed by the event to have been proved forsworn, and not fit to be put upon a jury or admitted as a witness.

CREAMER, a foreign merchant, but generally taken for one who has a stall in a fair or market. *Blount*.

CREDENTIALS, papers which give a title or claim to confidence, as the letters of commendation and power given to an ambassador,

or public minister, by the prince who sends him to a foreign court.

CREDIT, a transfer of goods on trust in confidence of future payment. The seller believes in the solvency and probity of the buyer, and delivers his goods to him in confidence of it; or he delivers them on the reputation of his customer. In book-keeping, the side of any account in which payment is entered opposed to debt.

CREDITOR, [*croyance*, Fr., trust], one who trusts or gives credit, correlative to debtor.

CREDITORS' BILL, a bill in equity filed by one or more creditors, by and in behalf of him or themselves, and all other creditors who shall come in under the decree, for an account of the assets and a due settlement of the estate. These bills are allowed upon the principle, that as executors and administrators have great power of preference at law, courts of equity ought, according to the maxim that equality is equity, to interpose upon the application of any creditor, by such a bill to secure a distribution of the assets, without preference to any one or more creditors. The usual decree against the executor or administrator is (as it is commonly phrased) *quod computet*, that is to say, it directs the master to take the accounts between the deceased and all his creditors; and to cause the creditors, upon due public notice, to come before him to prove their debts, at a certain place, and within a limited period; and it also directs the master to take an account of all the personal estate of the deceased in the hands of the executor or administrator, and the same to be applied in payment of the debts and other charges in a due course of administration.

As soon as the decree to account is made, the executor or administrator is entitled to an injunction out of Chancery, to prevent any of the creditors from suing him at law, or proceeding in any suits already commenced, except under the direction and controul of the court of equity where the decree is passed. The object of the court, under such circumstances, is to compel all the creditors to come in and prove their debts before the master, they being allowed 4l. per cent upon their debts, from the decree to account, and 3s. for their costs, and to have the proper payments and discharges made under the authority of the court; so that the executor or administrator may not be harassed by multiplicity of suits, or a race of diligence encouraged between different creditors, each striving for an undue mastery and preference. But in order to prevent any abuse, by connivance between an executor or administrator and a creditor, it is now a common practice to grant an injunction only, when the answer or affidavit of the executor or administrator states the amount of the assets, and upon the terms of his bringing the assets into court, or obeying such other order of the court, as the circumstances of the case may require. The same remedial justice is applied where the application, instead of being made by

creditors, is made by legatees or trustees. 1 *Story's Eq. Jurisp.* 442.

CREMENTUM COMITATUS (the increase of a county). The sheriffs of counties anciently answered in their accounts for the improvement of the king's rents, above the vicontiel rents, under this title.

CREPARE OCULUM, to put out an eye, which had a pecuniary punishment of 50s. annexed to it. This was the highest fine. *Turner's Anglo-Saxons*, v. ii., app. iii., c. 2, p. 515.

CREPUSCULUM, or **CREPUSCLE**, the twilight, i. e., the faint light diffused through the atmosphere by the sun, some time before rising and after setting; it is caused by the reflection of the sun's rays from the aqueous vapours and atmosphere overhead, which produce this effect in our climate to the height of forty-four miles. The morning twilight begins and the evening twilight ends, when the sun is about eighteen degrees below the horizon. At the poles, where there are six months day, and six months night, the twilight continues for two months, so that a great part of the half year's night is illuminated.

Crescente malitia crescere debet et poena. 2 Inst. 479.—(Vice increasing, punishment ought also to increase.)

CRETINUS, a sudden stream or torrent.

CRIMEN FALSI, the offence of forgery.

Crimen falsi dicitur, cum quis illicitus, cui non fuerit ad hæc data auctoritas, de sigillo regis raptò vel invento, breviam, cartam consignaverit. Fleta, l. 1, c. 23.—(The crime of forgery is when any one illicitly, to whom power has not been given for such purposes, has signed writs or charters with the king's seal, either stolen or found.)

CRIMEN LÆSÆ MAJESTATIS, the crime of injuring majesty; high treason.

Crimen læsæ majestatis omnia alia crimina excedit quoad poenam. 3 Inst. 210.—(The crime of treason exceeds all other crimes as far as its punishment.)

CRIMES, violations of rights, which, considered in reference to their evil tendencies, as regards the community at large, are the subjects of indictment. They consist either of misdemeanours or felonies. In our law misdemeanour is generally used in contradistinction to felony, and comprehends all indictable offences, which do not amount to felony, as perjury, battery, libels, conspiracies, &c.

It is not very easy in theory, and quite impossible according to the English law, to lay down any single principle by which to distinguish crimes from civil injuries—private from public wrongs. By the English law a distinction exists, but it seems wholly technical; depending sometimes on the situation of the agent; sometimes on the nature or relations of the thing which is the object of the act; sometimes on the manner in which the act is done; sometimes on the consequences of the act, the time of doing it, and other grounds which it would be

useless to enumerate, because they can be learned thoroughly only by an acquaintance with the law itself. 4 Bl. Com. 7, n. 3, by Mr. Justice Coleridge.

Crimina morte extinguuntur.—(Crimes are prevented by death.)

CRIMINAL, a person indicted for a public offence and found guilty.

CRIMINAL CONVERSATION, adultery. See **ADULTERY**.

CRIMINAL INFORMATION, a proceeding at the suit of the Queen, without a previous indictment or presentment by a grand jury. Criminal informations are of two sorts: (1) *ex officio*, which is a formal written suggestion of an offence committed, filed by the Attorney-General, or in the vacancy of that office by the Solicitor-General, in the Court of Queen's Bench, without the intervention of a grand jury. It lies for misdemeanours only, and not for treasons or felonies. The usual purposes are seditious or blasphemous libels or words, seditious riots not amounting to high treason, libels upon the Queen's ministers, the Judges or other high officers, reflecting upon their conduct in the execution of their official duties; obstructing such officers in the execution of their duties; against officers themselves for bribery, or for other corrupt or oppressive conduct. The information is filed in the Crown office without the previous leave of the court. (2) Information by the master of the Crown office, which is filed at the instance of an individual, with the leave of the court; and usually confined to gross and notorious misdemeanours, riots, batteries, libel, and other immoralities. The application is for a rule to show cause why a criminal information should not be filed against the party complained of, and must be founded upon an affidavit disclosing all the material facts of the case. If the court grant the rule *nisi*, it is afterwards, upon shewing cause, discharged or made absolute. When an information is filed, either thus or *ex officio*, it must be tried by a petit jury of the county where the offence arose, and for that purpose, unless the case be of such importance as to be tried at bar, it is sent down by writ of *nisi prius* into that county, and tried either by a common or special jury, like a civil action, and if the defendant is found guilty, he must afterwards receive judgment from the court of Queen's Bench. 4 Bl. Com. 308.

CRIMINAL LAW, this division of our jurisprudence comprises the administration of the Crown law by the Court of Queen's Bench at Westminster, consisting principally of a sort of *quasi* criminal law, as indictments for libels, nuisances, the repair of roads, bridges, &c., informations, *quo warranto*, *mandamus*, *certiorari*, and the judicial decision of questions concerning the poor laws; and the general criminal law of the kingdom as administered either in the Court of Queen's Bench, or at the sessions in London and Middlesex, and in the country, at sessions, and the assizes.

CROCARDS, a sort of old base money.

CROCIA, the *crozier*, or pastoral staff.

CROCIARIUS, the cross-bearer, who went before the prelate.

CROFT [*creaft*, Old Eng., handy-craft], a little close adjoining to a dwelling-house or homestead, and enclosed for pasture or arable, or any particular use.

CROISES, and **CROISADO**. See **CROYSSES**.

CROP, the seeds or products of the harvest in corn.

CROSS-BILL, a bill not original, filed in Chancery by a defendant in a suit against the plaintiff in the same suit, or against other defendants in the same suit, or against both, touching the matters in question in the original bill. It is usually brought either (1) to obtain a necessary discovery of facts in aid of the defence to the original bill, or (2) to obtain full relief for all parties touching the matters of the original bill. The first arises from a settled rule that a plaintiff in a suit cannot be examined as a witness in that suit; the latter case may occur, when the original bill is brought for the specific performance of a written contract, which the defendant at the same time insists ought to be delivered up or cancelled, to protect him from any subsequent litigation thereon.

It is a general rule that a cross-bill must be brought before publication has passed in the original cause, unless the plaintiff in the cross-bill will go to the hearing upon the depositions and proofs already published, or the Court should otherwise order. The original and cross-bills, called *cross-causes* in practice, most commonly proceed to be heard together, if practicable. *Story's Eq. Plead.* 311.

Also if a bill of exchange or promissory note be given in consideration of another bill or note, it is called a cross or counter bill or note.

CROSS-EXAMINATION, a close and rigid questioning of a witness by the counsel of the adverse party, in order to test the truth of his examination in chief. A witness cannot be cross-examined as to any fact which, if admitted, would be collateral and wholly irrelevant to the matter in issue, for the purpose of contradicting him by other evidence, in case he should deny the fact, and in this manner to discredit his testimony. When a witness has been once sworn to give evidence, the other party may cross-examine him, though he gave no evidence for the party who called him. Leading questions are admitted in the cross-examination of a witness, where much larger powers are given to counsel than in the original examination. Witnesses are cross-examined in equity by cross-interrogatories.

CROSS-REMAINDERS. These estates are grounded on a tenancy in common, and arise where lands are devised to two or more persons severally in tail, or to two or more as tenants in common in tail; and upon failure of their issue, to a third person, with an apparent intention that he should take the whole at once, cross-remainders in tail

between the two first devisees are to be implied; i. e., it is to be understood that each takes a vested remainder in tail expectant upon the other's estate. Thus a devise to A., B., and C., as tenants in common in tail, and in default of the issue of either of them, then to the other or others of them as tenants in common in tail, and in default of issue of all of them, then to a stranger in fee: A., B., and C. are tenants in common of one-third each in possession, with remainder as to A., to B. and C., as tenants in common in tail, with remainder as to B. to C. in tail, and with remainder as to C. to B. in tail, and so reciprocally as to the other two-thirds.

The old rule was that cross-remainders could not be implied between more than two devisees; but it is now fully settled that cross-remainders may be implied between any number of devisees, if the circumstances will warrant the implication. Thus in a case where the testator gave his lands to A. for life, then to the sons of A. successively in tail, with remainder to all and every the daughter and daughters of A. in tail as tenants in common, "and for default of such issue, then to the issue of the testator's sisters B., C., D., and E., in tail, in such manner as he had limited the same to A.'s issue, and for default of such issue to remain to his own right heirs for ever:" it was decided that cross-remainders should be implied not only between the daughters of each sister in their own family, but between the families themselves of the sisters; as the testator did not intend his heirs (as such) to take any thing while any issue of his sisters remained.

Cross-remainders may be implied in wills, marriage articles, and limitations of executory or imperfect trusts, but not in deeds, and for this reason, that although in a deed a remainder may be implied, yet words of inheritance cannot, so as to determine what quantity of an estate is conferred by the remainder; therefore, if no particular words were necessary to limit the inheritance, cross-remainders could be raised by implication in a deed as well as in a will. *Walk. Conn.* 189.

CROSSING CHECKS. It is very usual for the drawers of bankers' checks to write across them the name of the payee's banker, in which case the banker on whom the check is drawn will only pay to that banker; in other cases, as when the drawer is unaware of the payee's banker, it is usual for him to write merely the words "and Co.," leaving it to the payee to add the name of his banker. This serves the purpose of some security in case the check is lost, since it can only be paid through a banker, and moreover postpones in some measure the payment until the clearing hours in the afternoon; but the holder may erase the name of the banker, or even substitute another, if he please. Crossing does not insure its correct appropriation to any particular purpose. *Stewart v. Lee*, 1 M. & M. 158.

CROY, marsh land. *Blount*.

CROYESSES, pilgrims, because they wore the sign of the cross upon their garments. *Bract. l. v., pt. 2, c. 2.*

CROWN [*couronne*, Fr., *kroone*, Dut., *corona*, Lat.], an ornamental badge of regal power worn on the head by sovereign princes. The word is frequently used when speaking of the sovereign herself, or the right, duties, and prerogatives belonging to her. Also a silver coin of the value of five shillings.

CROWN OFFICE, a department belonging to the Court of Queen's Bench, commonly called the Crown side of the court. The 6 & 7 Vict., c. 20, abolished the clerks in this court, and the monopoly of their practice, throwing it open to all persons admitted or admissible to practise as attorneys of the Court of Queen's Bench; it also abolished several ancient offices, and many burthensome fees, and made the office subject to the direct control of the Lord Chief Justice. There are now only three officers of the Crown side appointed by the Lord Chief Justice, viz., the Queen's coroner and attorney, the master, and assistant master; their office is held during good behaviour.

The business of this office may be thus stated.

1st. Original proceedings, which consist of (a) indictments for assaults and batteries; libels, nuisances, perjuries, conspiracies, non-repair of roads, bridges, &c.; (c) informations.

2d. Proceedings by way of supervision or appeal, exercised by means of (a) a certiorari; (c) writ of error; (γ) mandamus.

3d. Collateral proceedings, consisting of (a) articles of the peace; (c) attachments; (γ) habeas corpus.

Two days in each week during term, viz., Wednesday and Saturday, are appropriated by the Court of Queen's Bench to the Crown business, called "Crown Paper Days." *Arch. Prac. of Crown Off.*

CRUSTUM, a purple garment mixed with many colours.

CRY DE PAIS, hue and cry.

CRYPTA, a chapel or oratory under ground, or under a church or cathedral. *Du Cange*.

CUCKING STOOL. See **CASTIGATORY**.

CUCKOLDOM, the act of adultery.

CUDE, a chrysom or face-cloth for a child baptized.

CUI ANTE DIVORTIUM (to whom before divorce). A writ for a woman divorced from her husband to recover her lands and tenements which she had in fee-simple or in tail, or for life, from him to whom her husband did alienate them during the marriage, when she could not gainsay it. *Reg. Orig.* 233.

CUI IN VITA (to whom in life). A writ of entry for a widow against him to whom her husband aliened her lands or tenements in his life-time; which must contain in it, that during his life she could not withstand it. *Reg. Orig.* 232.

Cui licet quod majus non debet quod minus est non licere. 4 Rep. 23.—(He who has authority to do the more important act, shall

not be debarred from doing that of less importance.)

Cui pater est populus non habet ille patrem. Co. Lit. 123.—(He to whom the people is father, has not a father.)

Cui plus licet quam par est, plus vult quam licet. 2 Inst. 464.—(He to whom more is granted than is just, wants more than is granted.)

Cuicunque aliquis quid concedit concedere videtur et id, sine quo res ipsa esse non potuit. 11 Co. 52.—(Whoever grants anything to any person, is supposed to grant that also without which the thing itself would be of no effect.)

Cuilibet in arte sua perito est credendum. Co. Lit. 125.—(Every one is considered skilful in his own art.)

Cujus est commodum ejus debet esse incommodum.—(Whose is the advantage, his also should be the disadvantage.)

Cujus est dare ejus est disponere. 2 Co. 71.—(Whose is to give, his is to dispose.)

Cujus est divisio alterius est electio. Co. Lit. 166.—(Whose is the division, the other's is the choice.)

Cujus est solum ejus est usque ad cælum et ad inferos. Co. Lit. 4.—(Whose is the soil, his it is even to heaven and to the middle of the earth.)

This maxim is also more succinctly and elegantly expressed, *Cujus est solum ejus est altum.*

Cujus juris (i. e., jurisdictionis) est principale, ejusdem juris erit accessorium. 2 Inst. 493.—(Whose jurisdiction is the principal, the same jurisdiction will be the accessory.)

Cujusque rei potissima pars est principium. 10 Co. 49.—(Of every thing the chief part is the principle.)

CULAGIUM, the laying up of a ship in the dock to be repaired.

Culpa est immiscere se rei ad se non pertinenti. 2 Inst. 208.—(It is a fault that any person should meddle in a matter not pertaining to him.)

Culpa lata dolo æquiparatur.—(A given fault is compared with its stratagem.)

Culpa tenet suos auctores.—(A fault finds its own authors.)

Culpæ pœna par esto. Pœna ad mensuram delicti statuenda est. Jur. Civ.—(Let the punishment be proportioned to the crime. Punishment is to be measured by the extent of the offence.)

CULPRIT [*cull*, abb. of *culpabilis*, and *ponit*, Lat., written by the clerk of arraigns, *pñt*, as a minute that issue was joined, or *ponit se super patriam*. *Cul* was probably intended to denote the plea, and *pñt*, the issue; others derive it from *culpa*, in a fault, and *præhensus*, taken], one who is indicted for a criminal offence: vulgarly mistaken for the legal denomination of a criminal.

CULREACH, a caution given by a lord of regality to punish a malefactor, when he replevied from the sheriff. *Scotch Dict.*

CULTURA, a parcel of arable land. *Blount.*

CULVERTAGE [*culum* and *vertere*, Lat., to turn tail], base slavery; the confiscation of an estate. *Mut. Par.* 1212.

CULWARD, and **CULVERD**, a coward.

Cum adsunt testimonia rerum quid opus est verbis. 2 Buls. 53.—(Where the proofs of facts are present, what need is there of words.)

Cum confidente sponte mitius est agendum. 4 Inst. 66.—(With one confiding willingly, it is to be done more gently.)

Cum duo inter se pugnantia reperiuntur in testamento ultimum ratum est. Co. Lit. 112.—(Where two things repugnant to each other are found in a will, the last is to be confirmed.)

CUNA CERVISIÆ, a tub of ale.

CUNEUS, a mint or place to coin money; from this word coin is derived.

CUNTEY-CUNTEY, a kind of trial by an ordinary jury.

CUM TESTAMENTO ANNEXO (with the will annexed). See **ADMINISTRATOR**.

CURAGULUS, one who takes care of a thing.

CURATE [*curator*, Lat.], the lowest degree in the church, being an officiating temporary minister regularly employed by the spiritual rector or vicar, either to serve in his absence or as his assistant. All curates ought, before they enter on their duties, to be licensed by the bishop of the diocese, and the law on the other hand has made several provisions for their proper maintenance. 28 Hen. VIII., c. 11; 1 & 2 Vict., c. 106; *Burn's Ecc. Law*, by Tyrw., vol. ii., p. 54.

CURATORES VIARUM, surveyors of the highways.

Curatus non habet titulum. 3 Buls. 310.—(A curate has not a title.)

CURFEU [*courrir*, to cover, and *feu*, Fr., fire], a bell which rang at eight o'clock in the evening, in the time of William the Conqueror, by which every person was commanded to rake up or cover over his fire, and put out his light; abolished by Henry I. in 1100. It was called in the law Latin of the middle ages, *ignitegium* or *pyritegium*.

Curia Cancellariæ officina justitiæ. 2 Inst. 552.—(The Court of Chancery is the workshop of justice.)

Curia Parliamenti suis propriis legibus substitit. 4 Inst. 50.—(The Court of Parliament is governed by its own peculiar laws.)

Curia domini Regis non debet deficere conquirentibus in justitiâ perquirendâ. 9 Co. 83.—(The court of our Lord the King ought not to be wanting to those complaining in the search of justice.)

CURIA, a court of justice.

CURIA ADVISARE VULT (the court desires to consider), a deliberation which a court of judicature sometimes takes, where there is any point of difficulty, before they give judgment in a cause. Abbreviated in our reports thus, *cur. adv. vult*.

CURIA CURSUS AQUÆ, a court held by the lord of the manor of Gravesend for the better management of barges and boats using the passage on the river Thames, thence to London and plying at Gravesend bridge, &c. 2 Geo. II., c. 26.

CURIA CLAUDENDA, an obsolete writ to compel another to make a fence or wall,

which he ought to make between his land and the plaintiff's, on his refusing or deferring to do the same. *Reg. Orig.* 155.

CURIA DOMINI, the lord's house, hall, or court where all the tenants meet at the time of keeping courts.

CURIA PALATII, the Palace Court.

CURIA PENTICIARUM, a court held by the sheriff of Chester, in a place there called the *Pendies* or *Pentice*: and it is probable, its being originally kept under a pent-house, or open shed covered with boards, gave it this denomination. *Blount*.

CURIA REGIS. See **AULA REGIS**.

CURIALITAS, a holding of land by curtesy.

CURIALITY, the privileges, prerogatives, or, perhaps, retinue of a court. *Bacon*.

CURIAE CHRISTIANITATIS, courts of christianity; ecclesiastical courts.

Curiosa et captiosa interpretatio in lege reprobatur. 1 *Buls.* 6.—(A curious and captious interpretation is reprobated in law.)

CURNOCK, a measure containing four bushels, or half a quarter.

CURRENCY, bank notes, or other paper money issued by authority, and which are continually passing as and for coin.

CURRICULUS, the year, or the course of a year.

CURSITORS [*clerici de cursu*, Lat.], clerks belonging to the Chancery, who make out original writs, and are called clerks of course. 18 *Edw. III.*, st. 5.

CURSONES TERRÆ, ridges of land.

Cursus curiæ est lex curiæ. 3 *Buls.* 53.—(The practice of the court is the law of the court.)

CURTESY OF ENGLAND [*jus curialitatis Angliæ*], an estate of freehold, not of inheritance, arising by act of law, which a husband has for his life in his wife's fee-simple or fee-tail estates, after her death. The wife must have been actually seized of such estates in deed, and have had issue born alive, which might by possibility have inherited. The wife's equitable inheritances are subject to curtesy, but it is not incident to copyholds, unless by special custom. By the custom of gavelkind, the husband, if he survive his wife, is entitled to a moiety, whether he has issue or not, so long as he remains unmarried. No right of curtesy attaches upon an estate held in joint-tenancy, for the right of survivorship is preferred to all charges and incumbrances which do not amount to at least a partial alienation of the share; neither does it attach upon a remainder or reversion expectant upon a particular estate of freehold.

The husband from the moment of the child's birth, or of the acquisition of the property by his wife (whichever last happens) is enabled to convey an estate for his own life; before the birth of a child, he can convey a good estate for the joint lives only of himself and his wife. If he make a lease for years, reserving rent, and die, the lease is absolutely determined, so that no acceptance of rent by the heir or those in reversion, can make it good, for though his estate

is *quodam modo* a continuance of the wife's estate, yet it is a continuance of it only for life, and he has no power to contract for or intermeddle with the inheritance; and, consequently, his lease falls off with the estate whence it is derived, and the lessee becomes tenant by sufferance by the continuance of possession afterwards. An estate by the courtesy, in respect of the estate tail, or of any prior estate created by the settlement, as well as a resulting use or trust to or for the settlor, is to be deemed a prior estate under the settlement within the contemplation of the Fines and Recoveries' Act appointing a protector; the husband would therefore be the protector of the settlement. 1 *Step. Com.* 246.

Though this estate is styled the curtesy of England, it appears to have been the established law of Scotland, where it was called *curialitas*; and it is likewise observed in Ireland by virtue of an ordinance of Henry III.

CURTEYN, the name of King Edward the Confessor's sword, which is the first sword carried before the English Sovereigns at their coronation; and it is said the point of it is broken as an emblem of mercy. *Mat. Par. in Hen. III.*

CURTILAGE [*cour*, Fr., court, and *leagh*, Sax., place], a court-yard, backside, or piece of ground lying near and belonging to a dwelling-house.

CURTILES TERRÆ, court lands. *Spel. of Feuds*.

CUSSORE [Indian], a term used in Hindoostan for the discount or allowance made in the exchange of rupees, in contradistinction to *butta*, which is the sum deducted. *Encyc. Lond.*

CUSTANTIA, costs.

CUSTODE ADMITTENDO, **CUSTODE AMOVENDO**, writs for the admitting and removing of guardians.

CUSTODES LIBERTATIS ANGLIÆ AUTHORITY PARLIAMENTI, the style in which writs and all judicial processes were made out during the grand rebellion from the execution of King Charles I. till Oliver Cromwell was declared Protector. 12 *Car. II.*, c. 3.

CUSTODIA LEGIS, in the custody of the law.

CUSTODIAM LEASE, a grant from the Crown under the Exchequer seal, by which the custody of lands, &c., seised in the King's hands, is demised or committed to some person as custodee or lessee thereof.

CUSTOM [*coutume*, Fr.], an unwritten law established by long usage and the consent of our ancestors. If it be universal, it is common law, if particular, it is then properly custom. The requisites to make a particular custom good are these:—(1) It must have been used so long that the memory of man runs not to the contrary; (2) it must have been continued; and (3) peaceable; also (4) reasonable, and (5) certain; (6) compulsory, and no left to the option of every person, whethe

he will use it or not; and (7) consistent with each other, one custom cannot be set up in opposition to another.

CUSTOM-HOUSE, the house or office where commodities are entered for importation or exportation; where the duties, bounties, or drawbacks payable or receivable upon such importation or exportation are paid or received; and where ships are cleared out, &c. The principal British custom-house is in London, but there are custom-houses subordinate to it in all the considerable sea ports.

CUSTOM-HOUSE BROKERS, persons authorised by the commissioners of customs to act for parties at their option in the entry or clearance of ships, and the transaction of general business. They give a bond to the commissioners in a sum of 1000*l.*, conditioned for their good conduct, and for the purpose of enabling restitution to be made of any loss accruing by their negligence or misconduct.

CUSTOM OF MERCHANTS [*lex mercatoria*], see **COMMERCE**.

CUSTOMARY COURT OF COPYHOLDERS, see **COPYHOLD**.

CUSTOMARY FREEHOLD, a variety of copyhold property, the evidences of the title to which are to be found upon the court-rolls, and the entries declare the holding to be according to the custom of the manor, but it is not said to be at the will of the lord. The incidents are similar to those of common or pure copyholds. 1 *Step. Com.* 212.

CUSTOMS, duties charged upon commodities on their being imported into, or exported out of, a country. They seem to have existed in England before the conquest, but the king's claim to them was first established by 3 *Edw. I.* These duties were, at first, principally laid on wool, woolfels (sheep skins), and leather when exported. There were also extraordinary duties paid by aliens, which were denominated *parva costuma*, to distinguish them from the former, or *magna costuma*. The duties of tonnage and poundage, of which mention is so frequently made in English history, were custom duties; the first being paid on wine by the ton, and the latter being an *ad valorem* duty of so much a pound on all other merchandise. When these duties were granted to the Crown, they were denominated *subsidies*, and as the duty of poundage had continued for a lengthened period at the rate of 1*s.* a pound, or five per cent., a subsidy came, in the language of the customs, to denote an *ad valorem* duty of five per cent. The *new subsidy*, granted in the reign of Wm. III., was an addition of five per cent. to the duties on most imported commodities. The various custom duties were collected for the first time, in a book of rates published in the reign of Charles II., a new book of rates being again published in the reign of George I. But exclusive of the duties entered in these two books, many more had been imposed at different times; so that the accumulation of

the duties, and the complicated regulations to which they gave rise, were productive of the greatest embarrassment. The Customs' Consolidation Act, 27 *Geo. III.*, c. 13, introduced by Mr. Pitt, in 1787, did much to remedy these, among other inconveniences. The method adopted was, to abolish the existing duties on all articles, and to substitute in their stead one single duty on each article, equivalent to the aggregate of the various duties by which it had previously been loaded. The resolutions on which the act was founded amounted to about 3000. A more simple and uniform system was, at the same time, introduced into the business of the custom house. These alterations were productive of the very best effects, and several similar consolidations have since been effected, particularly in 1825, when the various statutes then existing relative to the customs, amounting, including parts of statutes, to about 450, were consolidated and compressed into only eleven statutes of a reasonable bulk, and drawn up with great perspicuity. They were again amended in 1833, by the Acts 3 & 4 *Wm. IV.*, cc. 50, 51, 52, 53, 56, 57, 58, 59, 60, and 61, since which they have been very materially varied by 4 & 5 *Wm. IV.*, c. 89; 5 & 6 *Wm. IV.*, c. 66; 6 & 7 *Wm. IV.*, c. 60; and 1 & 2 *Vict.*, c. 113; 3 & 4 *Vict.*, cc. 17, 19, 23; 5 & 6 *Vict.*, cc. 14, 34, 47, 56. 1 *Step. Com.* 575; *McCulloch's Com. Dict.*

CUSTOS BREVIUM (the keeper of the writs), a principal clerk belonging to the Court of Common Pleas, whose office is to keep all the writs returnable into the court.

CUSTOS MORUM, the guardian of morals.

CUSTOS PLACITORUM CORONÆ (the keeper of the pleas of the Crown). The *custos rotulorum*.

CUSTOS ROTULORUM (the keeper of the rolls or records of the county). He is the principal justice of the peace within the county, but he is rather an officer or minister than a Judge.

CUSTOS SPIRITUALIUM, he that exercises the spiritual jurisdiction of a diocese, during the vacancy of any see, which, by the canon law, belongs to the dean and chapter, but, at present, in England, to the archbishop of the province by prescription. *Encyc. Lond.* *Custos statum hæredis in custodia existentis meliorem, non deteriozem, facere potest.* 7 *Co.* 7.—(A guardian can make the estate of an existing heir under his guardianship, better, not worse.)

CUSTOS TEMPORALIUM, the person to whom a vacant see or abbey was given by the king, as supreme lord. His office was, as steward of the goods and profits, to give an account to the escheator, who did the like to the exchequer. *Encyc. Lond.*

CUTHRED, a knowing or skilful counsellor.

CUTPURSE, one who steals by the method of cutting purses; a common practice when men wore their purses at their girdles, as was once the custom. *Ibid.*

CUTTER OF THE TALLIES, an officer in

the exchequer, to whom it belonged to provide wood for the tallies, and to cut the sum paid upon them, &c.

CY PRES (as near to), an equitable doctrine thus applied:—when there is an excess in an appointment under a power executed by will, affecting real estate, the court will carry the power out as near to (*cy près*) the testator's intention as practicable, and prevent such excess disappointing the general design. This doctrine does not apply to personalty, and it is expressly confined to wills, and Lord Kenyon, in *Brudenell v. Elmes*, 1 *East*, 451, expressly laid it down, that the doctrine went to the utmost verge of the law, even in the construction of wills, but that it had never been applied to the construction of deeds, and he accordingly refused to extend it to a limitation in a deed executing a power.

It is also applied to charitable legacies, it matters not how uncertain the persons or the objects may be, or whether the persons who are to take are *in esse* or not, or whether the legatee be a corporation capable in law of taking or not, or whether the bequest can be carried into exact execution or not, for in all these and the like cases the court will sustain the legacy, and give it effect according to its own principles. And where a literal execution becomes inexpedient or impracticable the court will execute it as nearly as it can, according to the original purpose, or, as the technical expression is, *cy près*.

The doctrine as applied to charities was formerly pushed to a most extravagant length. But this sensible distinction now prevails, that the court will not decree the execution of a charitable trust in a manner different from that intended, except so far as it is seen that the intention cannot be literally executed. In that case another mode will be adopted consistent with the general intention, so as to execute it, though not in mode, yet in substance. If the mode should become by subsequent circumstances impossible, the general rule is not to be defeated, if it can in any other way be obtained. Where there are no objects remaining to take the benefit of a charitable corporation, the court will dispose of its revenues by a new scheme, upon the principles of the original charities, *cy près*.

There is also a modification of the strictness of the common law, as to conditions precedent in regard to personal legacies, which is at once rational and convenient, and promotive of the intention of the testator. It is, that where a literal compliance with the condition becomes impossible from unavoidable circumstances, and without any default of the party, it is sufficient that it is complied with as nearly as it practically can be, *i. e.*, *cy près*. This modification is derived from the civil law, and stands upon the presumption that the donor could not intend to require impossibilities, but only a substantial compliance with his directions, as far as they should admit

of being fairly carried into execution. It is upon this ground that courts of equity constantly hold in cases of personal legacies, that a substantial compliance with the condition satisfies it, although not literally fulfilled. Thus, if a legacy upon a condition precedent shall require the consent of three persons to a marriage, and one or more of them should die, the consent of the survivor or survivors would be deemed a sufficient compliance with the condition. And, *à fortiori*, this doctrine would be applied to condition subsequent. *Sugd. Powers*, 549; 1 *Story's Eq. Jur.* 235, and *vol. ii.*, 386, 390.

CYCLE [*syclus*, Lat., *κύκλος*, Gr.], a measure of time; a space in which the same revolutions begin again; a periodical space of time. *Encyc. Lon.*

CYNE-BOT, or **CYNE-GILD**, the portion belonging to the nation of the mulct for slaying the king, the other portion or 'wēr' being due to his family.

CYNING [*cyn*, *gens*, *natio*], a king; a son or child of the people. It is manifestly a patronymic, like *Æscing*, son of *Æsc*; *Uffing*, son of *Uffa*; *Ælling*, son of *Ælle*; *Cerdicing*, son of *Cerdic*; *Iding*, son of *Ida*; *Cryding*, son of *Cryda*; *Ætheling*, son of the *Æthel*, or noble. *Ant. Inst. Eng.*

CYPHONISM, a punishment used by the ancients, which some suppose to have been the smearing of the body with honey, and exposing the person to flies, wasps, &c. But the author of the notes on Hesychius says, under the word *κύφων*, that it is derived from the word *κύπτω*, to bend or stoop, and signifies that kind of punishment still used by the Chinese, called by Sir George Staunton, the wooden collar, by which the neck of the malefactor is bent or weighed downward. *Encyc. Lond.*

CYRCE, a church.

CYRICBRYCE, a breaking into a church.

CZAR [written more properly *Tzar*, Slav.], the title of the emperor of Russia, first assumed by Basil, the son of Basilides, under whom the Russian power began to appear, about 1470.

CZARINA, the title of the empress of Russia.

CZAROWITZ, the title of the eldest son of the czar and czarina.

D

Da tua dum tua sunt, post mortem tunc tua non sunt. 3 *Buls.* 18.—(Give that which is yours, whilst it is yours; after death it is then not yours.)

DÆD-BANA, the actual perpetrator of a homicide.

DAGUS, or **DAIS**, the chief or upper table in a monastery.

DAKER, or **DIKER**, ten hides. *Blount.*

DALUS, **DAILUS**, **DAILIA**, a certain measure of land; such narrow slips of pasture as are left between the ploughed furrows in arable land. *Cowel.*

DAM, a boundary or confinement.

DAMAGE [*damna*, Lat.], any hurt or hindrance

that a person receives in his estate, but particularly a part of what the jurors are to enquire of and bring in, when a verdict passes for the plaintiff. It is plainly derived from the Anglo-Saxons, and taken in two several significations, the one *properly* and generally, as it is in cases wherein damages are founded upon the statutes, where costs are included within the word damages, and taken as such; the other *relatively*, when the plaintiff declares for the wrong done to him to the damage of such a sum, this is to be taken for the wrong which passed before the action commenced, and is assessed by reason of the foregoing trespass and cannot extend to the costs, which are future and of another nature. The plaintiff cannot recover greater damages than he has laid in the conclusion of his declaration.

In real actions no damages are recoverable. In the mixed action of ejectment the damages are ordinarily nominal (unless under 1 Geo. IV., c. 87), the actual damages sustained by the detention of the property, &c., being usually recovered in an action of trespass for *meane profits*. Damages are recoverable in all personal actions, and in assumpsit, covenant, case, trover, and trespass, they are the sole object of the action, whilst in debt and detinue they are nominal; in replevin, if the action be in the *detinet*, the damages are measured by the actual injury sustained; but if in the *detinuit*, the damages are given for the injury the plaintiff has sustained by the taking only, which is usually four guineas, the expences of the replevin bond.

By the 3 & 4 Wm. IV., c. 42, § 28, it is enacted "that upon all debts or sums certain, payable at a certain time or otherwise, the jury on the trial of any issue, or on any inquisition of damages, may, if they shall think fit, allow interest to the creditor, at a rate not exceeding the current rate of interest from the time when such debts or sums certain were payable, if such debts or sums be payable by virtue of some written instrument at a certain time, or if payable otherwise, then from the time when demand of payment shall have been made in writing, so as such demand shall give notice to the debtor that interest will be claimed from the date of such demand until the time of payment; provided that interest shall be payable in all cases in which it is now payable by law." By § 29, "the jury on the trial of any issue, or on any inquisition of damages, may, if they shall think fit, give damages in the nature of interest, over and above the value of the goods at the time of the conversion or seizure, in all actions of trover or trespass *de bonis asportatis*, and over and above the money recoverable in all actions on policies of assurance made after the passing of this act."

Double and treble damages are in some cases given by particular statutes, but at common law the damages are always single. Damages may be limited, increased, or reduced, according to circumstances. 1

Reeve, 14; 2 *Turner's Anglo-Sax.*, v. ii., app. iii. c. ii.; *Chitt. Arch. Prac.* 320.

It may be stated as a general proposition, that for breaches of contract and other wrongs and injuries cognizable at law, courts of equity do not entertain jurisdiction to give redress by way of compensation or damages, where these constitute the sole objects of the bill. For wherever the matter of the bill is merely for damages, and there is a perfect remedy, therefor, at law, it is far better that they should be ascertained by a jury than by the conscience of the equity Judge. And, indeed, the just foundation of equitable jurisdiction fails in all such cases, as there is a plain, complete, and adequate remedy at law. Compensation or damages ought, therefore, to be decreed in equity only as incidental to other relief, or where some peculiar equity intervenes. The mode by which such compensation or damages are ascertained, is either by a reference to a master, or by directing an issue, *quantum damnificatus*, which is tried by a jury. 2 *Story's Eq. Jurisp.* 93.

DAMAGE-CLEER [*damna clericorum*], a fee assessed of the tenth part in the Common Pleas, and the twentieth part in the Queen's Bench and Exchequer, out of all damages exceeding five marks recovered in those courts, in actions upon the case, covenant, trespass, &c., wherein the damages were uncertain; which the plaintiff was obliged to pay to the prothonotary or the officer of the court wherein recovered, before he could have execution for the damages. This was originally a gratuity given to the prothonotaries and their clerks, for drawing special writs and pleadings; but it is now taken away by statute, and if any officer in these courts take any money in the name of damage-cleer, or anything in lieu thereof, he shall forfeit treble the value. 17 Car. II. c. 6.

DAMAGE-FEASANT, or **FAISANT**, doing damage. If a stranger's beasts are found in another person's ground without his leave or license, and without the fault of the possessor of the close (which may happen from his not repairing his fences), and there doing damage by feeding or otherwise, to the grass, corn, wood, &c., the person damaged may distrain and impound them, as well by night as in the day, lest the beasts escape before taken. By 6 & 7 Vict., c. 30, if any person shall release, or attempt to release cattle lawfully seized by way of such distress from the pound or place where they shall be impounded, or on the way to or from such pound or place, or shall destroy such pound or place, or any part thereof, or any lock or bolt thereof, he shall, on conviction before two justices of the peace, be liable to a penalty not exceeding 5*l.*, and to payment of the reasonable charges and expenses.

DAMAGEABLE, susceptible of hurt.

DAME [*dame*, Fr., *dama*, Sp.], a lady; also, in common use, a farmer's wife or a mistress of a family of the humbler ranks.

DAMNIFY, to endamage, to injure, to cause loss to any.

DAMNOSA HÆREDITAS, a disadvantageous inheritance.

DAMNUM ABSQUE INJURIA, (a loss without a wrong). This is not actionable. Thus, if I have a mill, and a neighbour builds another mill upon his own ground, *per quod*, the profit of my mill is diminished, yet no action lies against him, for every one may lawfully erect a mill upon his own ground. But if I have a mill by prescription on my own land, and another erects a new mill, which draws away some portion of the stream from mine, so as to diminish its former power, an action of trespass on the case will lie against him. *Step. Com.*, vol. iii. p. 465.

DAMNUM FATALE, fatal damage, for which bailees are not liable. Among fatal damages were included by the civilians losses by shipwreck, by lightning, or other casualty by pirates, and by superior force. Losses by fire, burglary, and robbery, seem also to have been included. But theft was not numbered among such casualties. *Story on Bailments*, 471.

DAMSEL, a young gentlewoman.

DAN [*dominus*, Lat.], the better sort of men in this kingdom; so the Spanish *Don*. The old term of honor for men, as we now say *Master*.

DANEGET, DANEGELD, or DANEGOLD [*denegeldum*, *dane*, and *gelt*, tribute], a tribute of 1s., and afterwards of 2s. upon every hide of land through the realm, laid upon our ancestors by the Anglo-Saxons, for maintaining such a number of forces as were thought sufficient to clear the British seas of Danish pirates, who greatly annoyed our coasts. It continued a tax till the time of Stephen, and was one of the rights of the Crown. *Anc. Inst. Eng.*

DANE-LAGE, the Danish law, which was principally maintained in the midland counties, and also on the eastern coast (the parts most exposed to the visits of that piratical people) while the Danes had sway in this country.

DANGERIA, a money payment, made by forest tenants, that they might have liberty to plough and sow in time of pannage or mast feeding. *Manw. For. Laws*.

DANISM [*δανεισμος*, Gk., usury], the act of lending money on usury.

Dans et retinens nihil dat.—(Giving and retaining gives nothing.)

DAPIFER [*à dapes ferendo*, Lat.], a steward either of a king or lord. *Spel.*

DARDUS, a dart.

DARE AD REMANENTIAM, to give away a remainder in fee, or for ever.

DARREIN, a corruption of the Fr. *dernier*, the last.

DARREIN PRESENTMENT, *assize of*, lay only where a man had an advowson by descent from his ancestors; it is abolished by 3 & 4 Wm. IV., c. 27, § 36.

DATE, that part of a deed, writing, or letter

which expresses the day of the month and year in which it was made. Dates began to be inserted in deeds in the reigns of Edward II. and III. A deed, however, is good, although it mentions no date, or has a false or impossible date, provided the real date of its delivery can be proved.

DATIVE, or DATIF, that which may be given or disposed of at will and pleasure.

DATUM, a first principle; a thing given.

DAVATA TERRÆ, DAWACH, a portion of land so called in Scotland. *Stene*.

DAUPHIN, the title of the eldest son of the King of France.

DAY [*dies*], in its largest sense the time of a whole apparent revolution of the sun round the earth, but, in its popular acceptation, that part of the twenty-four hours when it is light, or the space of time between the rising and the setting of the sun. The English, French, Dutch, Germans, Spaniards, Portuguese, and Egyptians begin their day at midnight; the Jews, Italians, and Chinese at sun-setting; the ancient Babylonians, Persians, Syrians, and modern Greeks at sun-rising; and the Arabians and modern astronomers at noon.

In the space of a day all the twenty-four hours are usually reckoned. Therefore, in general, if I am bound to pay money on any certain day, I discharge the obligation if I pay it before twelve o'clock at night; after which the following day commences. 1 *Step. Com.* 265. A Court will take notice of the fraction of a day, if it be necessary for the purposes of justice.

DAY IN BANC, the return day of the *distingas* or *habeas corpora juratorum*.

DAY-BOOK, a tradesman's journal; a book in which all the occurrences of the day are set down.

DAY-RULE, or DAY-WRIT, a permission granted to a prisoner to go out of the prison, for the purpose of transacting his business, as to hear a case in which he is concerned at the assizes, &c. The prisoner makes an application to the marshal and warden, and pays some trifling fee; he also signs a petition to the Court, by whose process he is detained in custody, and receives a certificate of the Court having granted a day-rule, which protects him from arrest, &c. By R. H. 45 Geo. III., and R. E. 30 Geo. III., every prisoner having a day-rule shall return within the walls of the prison at or before nine o'clock of the evening of the day for which such rule shall be granted.

DAY-WERE OF LAND [*diurnalis, diurnarum*], as much arable land as would be ploughed up in one day's work, or one journey, as the farmers still call it.

DAYERIA, a dairy.

DAYS MAN, an arbitrator, an elected Judge.

DEACON [*diacre*, Fr., *diacono*, It., Span., and Port., *diaconus*, Lat., *διδκωρος*, Gk.], a minister or servant in the church, whose office is to assist the priest in divine service, and the distribution of the sacrament, &c. He may now perform any of the divine offices which

a priest may do, except only pronouncing the absolution and consecrating the sacrament of the Lord's Supper. By 13 Eliz., c. 12, and 44 Geo. III., c. 43, it is provided (conformably to the canons) that none shall be ordained deacon under twenty-three years, nor priest under twenty-four years of age; though as to deacons the Archbishop of Canterbury has the privilege of admitting them (by faculty or dispensation) at an earlier period. None shall be ordained either priest or deacon, without first subscribing the thirty-nine Articles of Religion; nor by 1 Eliz., c. 1, and 1 W. & M., c. 8, without first taking the oaths of allegiance and supremacy. By 24 Geo. III., c. 35, the Bishop of London, or other bishop by him appointed, may ordain aliens to exercise the office of deacon or priest out of the dominions of the Crown, without the oath of allegiance. A deacon is not capable of any ecclesiastical promotion; yet he may be chaplain to a family, curate to a beneficed clergyman, or lecturer to a parish church.

In Scotland, an overseer of the poor, or the master of an incorporated company.

DEAD BODIES. Taking them up for the purpose of dissection, or otherwise, is a misdemeanor at common law, punishable with fine and imprisonment. Refusing to bury dead bodies by those whose duty it is to do so, is punishable by the temporal courts, independently of spiritual censures, on indictment or information. As to the interment of dead bodies cast on shore from the sea, see 48 Geo. III., c. 75. The Anatomy Act is the 2 & 3 Wm. IV., c. 75.

DEADLY FEUD, a profession of irreconcilable hatred till a person is revenged even by the death of his enemy.

DEAD MAN'S PART, the remainder of an intestate's moveables, besides what of right belongs to his wife and children. This was formerly made use of in masses for the soul of the deceased; subsequently, the administrators applied it to their own use and benefit, until the 1 Jac. II., c. 17, subjected it to distribution amongst the next of kin.

DEAD-PLEDGE [*mortuum vadium*], a mortgage of lands or goods.

DEAFFORESTED, or DISAFFORESTED, discharged from being a forest, or freed and exempted from the forest laws. 17 Car. I., c. 16.

DE AMBITU, of obtaining a place by bribery.

DEAN [*ἡγεμῶν*, Gk., ten], an ecclesiastical governor or dignitary, so called, as he presides over ten canons or prebendaries at the least. He is chief of the chapter ordinarily in a cathedral church, the rest of the society being called *capitulum*, the chapter.

Considered in respect of the difference of office, deans are of six kinds:—1. *Deans of Chapters*, who are either of cathedral or collegiate churches. 2. *Deans of Peculiars*, who have sometimes both jurisdiction and cure of souls, and sometimes jurisdiction only. 3. *Rural Deans*, almost grown out of use, though their deaneries still subsist as an

ecclesiastical division of the diocese or arch-deaconry. They seem to have been deputies of the bishop, planted all round his diocese, the better to inspect the conduct of the parochial clergy, to inquire into and report dilapidations, and to examine the candidates for confirmation; and armed, in minuter matters, with an inferior degree of judicial and coercive authority. 4. *Deans in the Colleges of our Universities*, who are officers appointed to superintend the behaviour of the members, and to enforce discipline. 5. *Honorary Deans*, as the Dean of the Chapel Royal, St. James's. 6. *Deans of Provinces, or Deans of Bishops*. Thus the Bishop of London is Dean of the province of Canterbury, and to him, as such, the archbishop sends his mandate for summoning the bishops of his province when a convocation is to be assembled.

Another division, arising from the nature of their office, is into deans of *spiritual* promotions, and deans of *lay* promotions. Of the former kind are deans of peculiars, with cure of souls, deans of the royal chapels and of chapters, and rural deans; of the latter kind are deans of peculiars without cure of souls, who therefore may be, and frequently are, persons not in holy orders.

Their appointments are either *elective*, as deans of chapters of the old foundation, though the Crown has, in fact, the real patronage; and *donative*, as those deans of chapters of the new foundation, who are appointed by the royal letters-patent. The 3 & 4 Vict., c. 113, provides that the old deaneries (except in Wales) shall thenceforth be in the direct patronage of her Majesty, who may, on the vacancy thereof, appoint by letters-patent a spiritual person to be dean. That no person shall hereafter be capable of receiving the appointment of dean, archdeacon, or canon, until he shall have been six complete years in priest's orders, and that the dean shall reside for at least eight months in the year.

DEATH [Sax.], the extinction of life; the departure of the soul from the body; defined by physicians as a total stoppage of the circulation of the blood, and a cessation of the animal and vital functions consequent thereon, such as respiration, pulsation, &c.

In legal contemplation, it is of two kinds; (1), *natural*, i. e., the extinction of life; (2), *civil*, where a person is not actually dead, but is adjudged so by the law, as when a person is banished or abjures the realm, or enters into a monastery. Civil death, also, occurs where a man, by act of Parliament, or judgment of law, is attainted of treason or felony; for immediately upon such attainder he loses (subject indeed to some exceptions) his civil rights and capacities, and becomes, as it were, *civiliter mortuus*.

DEATH-BED DECLARATIONS are constantly admitted in evidence. The principle of this exception to the general rule is founded partly on the awful situation of the dying person, which is considered to be as

powerful over his conscience as the obligation of an oath, and partly on a supposed absence of interest on the verge of the next world, which dispenses with the necessity of cross-examination. But before such declarations can be admitted in evidence against a prisoner, it must be satisfactorily proved that the deceased, at the time of making them, was conscious of his danger, and had given up all hope of recovery, and this may be collected from the nature and circumstances of the case, although the declarant did not express such an apprehension. It is not essential that the party should apprehend immediate dissolution; it is sufficient if he apprehend it to be impending.

Much consideration should be given to the state of the mind of the party whose declarations are received. Strongly as his situation is calculated to induce the sense of obligation, it must also be recollected that it has often a tendency to obliterate the distinctness of his memory and perceptions; and therefore, whenever the accounts received from him are introduced, the degree of his observation and recollection is a circumstance which it is of the highest importance to ascertain. Sometimes the declaration is of a matter of judgment, of inference and conclusion, which, however sincere, may be fatally erroneous. The circumstances of confusion and surprise connected with the object of the declaration, are to be considered with the most minute and scrupulous attention; the accordance and consistency of the fact related with the other facts established in evidence, is to be examined with peculiar circumspection; and the awful consequences of mistake must add their weight to all the other motives for declining to allow an implicit credit to the narrative, on the sole consideration of its being free from the suspicion of wilful misrepresentation. *Pothier, by Evans*, ii. 293.

As the declarations of a dying man are admitted, on a supposition that, in his awful situation on the confines of a future world, he had no motives to misrepresent, but, on the contrary, the strongest motives to speak without disguise and without malice, it necessarily follows that the party against whom they are produced in evidence may enter into the particulars of his state of mind, and of his behaviour in his last moments, or may be allowed to show that the deceased was not of such a character as was likely to be impressed by a religious sense of his approaching dissolution. *Phil. Evid.*, vol. i. 234; *Starkie's Evid.*, vol. i. 22; vol. ii. 365.

DEATHSMAN, executioner, hangman; he that executes the extreme penalty of the law.

DE BENE ESSE (conditionally), to accept or allow a thing to be well done for the present; but when it comes to be more fully examined or tried, to stand or fall according to the merit of the thing in its own nature.

Bills in Chancery to take testimony *de bene esse* bear a close analogy to bills to perpetuate testimony, and are often confounded with them. But they stand upon distinct considerations. Bills to perpetuate testimony can be maintained only when no present suit can be brought at law by the party seeking the aid of the court to try his right. Bills to take testimony *de bene esse*, on the other hand, are sustainable only in aid of a suit already depending. The latter may be brought by a person who is in possession, or who is out of possession; and whether he is plaintiff or he is defendant in the action at law.

The object of the bill is to take the testimony of witnesses for the trial at law, where the testimony may otherwise be lost; as, for example, where the witnesses are aged or infirm, or are about to depart from the country. So if a witness is the only witness to the thing to which he is to be examined, a bill will lie on account of the general uncertainty of human life, to take his testimony *de bene esse*, notwithstanding he is neither aged nor infirm. An affidavit should be annexed to the bill of the circumstances by which the evidence is in danger of being lost, because the bill has a tendency to create delays, and may be used as an instrument unduly to retard the trial; and, therefore, an affidavit that the bill is well founded is required. *Story's Eq. Pleadg.*, 252.

DEBENTURE [*debentus*, Lat., from *debeo*], a writ or note by which a debt is claimed.

Also, a term used at the custom-house for a kind of certificate, signed by the officers of the customs, which entitles a merchant exporting goods to the receipt of a bounty or drawback.

It is enacted, by 3 & 4 Will. IV., c. 52, § 86, that no drawback or bounty shall be allowed upon the exportation of any goods, unless entered in the name of the real owner thereof, or of the person who had actually purchased and shipped the same, in his own name, and at his own risk, on commission.

Such owner or commission-merchant shall make and subscribe a declaration on the debenture that the goods have been actually exported, and are not to be reloaded in any part of the United Kingdom, &c.; and if such owner or commission-merchant shall not have purchased the right to such drawback or bounty, he shall declare, under his hand in the entry, and in his oath upon the debenture, the person who is entitled thereto; and the name of such person shall be inserted in the cocket and in the debenture, and his receipt on the latter shall be the discharge of such drawback or bounty, § 87. All debentures must be on 5s. stamps. Debentures or certificates for bounty on the exportation of linens or sailcloth are exempted from duty.

Debet esse finis litium. Jenk. Cent. 61.—(There ought to be an end of law suits.)

DEBET ET DETINET (he oweth and detaineth). An action shall be always in the *debet et detinet*, when he who makes a bargain or contract, or lends money to another, or he to whom a bond is made, brings the action against him who is bounden, or party to the contract and bargain, or unto the lending of the money, &c., as by the obligee against the obligor. But if it be brought by or against an executor for a debt due to or from the testator, this, not being his own debt, must be sued for in the *detinet* only. N. N. B. 119.

DEBET ET SOLET (he oweth and enjoyeth). If a person sue to recover any right, whereof his ancestor was disseised by the tenant of his ancestor, then he uses the word *debet* alone in his writ, because his ancestor only was disseised, and the estate discontinued; but if he sue for anything that is now first of all denied him, then he uses *debet et solet*, by reason his ancestor before him, and he himself, usually enjoyed the thing sued for, until the present refusal of the tenant. Reg. Orig. 140; F. N. B. 98.

Debet quis juri subjacere, ubi deliquit. 3 Inst. 34.—(Every one ought to be amenable to the law of the place where he commits an offence.)

DEBIT, the left hand page of a ledger, to which all articles are carried that are charged to an account.

Debitum et contractus sunt nullius loci. 7 Co. 3.—(Debt and contract are of no place.)

Debitum in presenti solvendum in futuro.—(A debt due at present to be paid at a future time.)

Debitum recuperatum.—(A debt recovered.)

DEBITOR, a debtor. According to the Roman law, when a debtor was made to pay, and could not, within thirty days, find security, the Judge delivered him to his creditor bound with cords or fetters of not less than fifteen lbs. weight. He was then kept in prison for sixty days, at his own expense if he chose, if not, the creditor was bound to give him not less than a pound weight of meal a day. At the end of that time he might be put to death, or sold for a slave; and when the creditor took him to himself, the treatment of the adjudged debtor was often more cruel and merciless than that of the purchased slave. In the year 325, B. C., a law passed respecting the power of the creditor to the goods of the debtor, and prohibiting from putting in chains or fetters.

A creditor at Athens had power not only to sell his debtor into a foreign country, but even his children. Among the Jews the debtor became the slave or bondman of the creditor, who had not power to sell him, and they went out of servitude in the year of jubilee. Levit. xxv. 39, 53.

Debitor non præsumitur donare. Jur. Civ.—(A debtor is not presumed to give.)

Debile fundamentum fallit opus. 3 Co. 231.—(A bad foundation ruins the work.)

DE BONO ET MALO, writs of. It was

anciently the course to issue special writs of gaol delivery for each particular prisoner, which were called writs *de bono et malo*; but these being found inconvenient or oppressive, a general commission for all the prisoners has long been established in their stead. 4 Step. Com. 334.

DEBT [*debitum*, Lat., *dette*, Fr.], a sum of money due from one person to another. An action of debt lies where a person claims the recovery of a liquidated or certain sum of money affirmed to be due to him; and it is generally founded on some contract alleged to have taken place between the parties, or on some matter of fact from which the law will imply a contract between them. This is debt in the *debet*, which is the principal and only common form. There is another species mentioned in the books, called debt in the *detinet*, which lies for the specific recovery of goods, under a contract to deliver them. 1 Chit. 109; Reeves, 159; Scho. Nisi Prius, tit. Debt.

The legal priority of debts is:—1. Debts due to the Crown by record or specialty; 2. Judgments, decrees, recognizances, and statutes; 3. Debts by special contract, as on bonds and other instruments under seal; and 4. Debts on simple contract, as on bills or notes and verbal promises, or such as are implied by law, and of which those due to the Crown are to be first satisfied; servants' and labourers' wages are also entitled to preference.

DEBTEE-EXECUTOR. If a person indebted to another make his creditor or debtee his executor, or if such creditor obtain letters of administration to his debtor, he may retain sufficient to pay himself before any other creditors whose debts are of equal degree. Plowd. 543.

DEBTOR, he that owes something to another.

DECALOGUE [*Δεκάλογος*, Gr.], the ten commandments given by God to Moses. The Jews called them the ten words, hence the name.

DE CÆTERO, henceforth.

DECANAL, pertaining to a deanery.

DECANUS, a dean.

DECAPITATION, the act of beheading.

DECEIT [*deceptio*, Lat.], fraud, cheat, craft, or collusion used to deceive and defraud another.

There was formerly a writ of deceit, which was an action brought in the Common Pleas to recover a judgment obtained in any real action, by fraud or collusion between the parties to the prejudice of the right of a third person. It is abolished by 3 & 4 Wm. IV., c. 27, § 36.

By the civil law every person is bound to warrant a thing that he sells or conveys, although there be no express warranty; but the common law binds him not, unless there be a warranty, either in deed or in law; for *caveat emptor*. 1 Inst. 10, n. a.

An action on the case, in nature of deceit, may be maintained for the breach of an implied warranty, as if a merchant sell cloth to

another knowing it to be badly filled; so if an innkeeper sell wine as sound and good, which he knows to be corrupt, although there be not any express warranty, yet an action on the case in nature of deceit will lie against him, because it is a warranty in law. In cases of this kind, however, which are grounded merely on the deceit, it is essentially necessary that the knowledge of the party, or, as it is technically termed, the scienter, should be averred in the declaration, and also proved.

An action on the case, in nature of a writ of deceit, may be maintained against any person who deceives by a false assertion, and thereby injures another who has placed a reasonable confidence in him: as where a party in possession of a personal chattel sells it, and at the time of sale affirms it to be his own, when in truth it belongs to another, the vendee may recover a compensation in damages for such injuries as he can prove to have been sustained in consequence of this deceit; for the possession of a personal chattel is a color of title, and it is but a reasonable confidence which the vendee places in the vendor, when he affirms it to be his own. But where the affirmation is (as it is termed in some of the books) a mute assertion; that is, where the party deceived may exercise his own judgment; as where it is mere matter of opinion, or where he may make enquiry into the truth of the assertion, and it becomes his own fault from laches that he is deceived, in this case an action cannot be maintained; as where a person buys a horse, which the seller affirms to have two eyes, and the horse has but one only; in such case the purchaser, unless, as is quaintly observed in one of the year books, he be blind, is remediless, for *vigilantibus non dormientibus jura subveniunt*.

It is to be observed that actions on the case for the breach of an *express* warranty, bears a strong resemblance to actions on the case in nature of deceit on *implied* warranties: but this distinction between them ought to be attended to, that in actions on the case in the nature of deceit, the *gravamen* is the deceit, and the gist of the action is the scienter; but in the action for breach of warranty, the *gravamen* is the breach of warranty; and where the plaintiff declares in tort for such breach, it is not necessary to allege the scienter, nor, if alleged, to prove it.

Where an article is warranted, and the warranty is not complied with, the vendee has three courses, any one of which he may pursue. 1. He may refuse to accept the article; 2. He may accept it, and bring a cross-action on the warranty; 3. He may, without bringing a cross-action, use the breach of warranty, in reduction of damages in an action brought for the price.

Where a person, with a design to deceive and defraud another, makes a false representation of a matter inquired of him, in consequence of which the person to whom the representation is made enters into a con-

tract, and thereby sustains an injury, an action on the case, in the nature of deceit, will lie at the suit of the party injured, against the party making the fraudulent representation, although a stranger to the contract, from the entering into which the plaintiff was damaged. It is not necessary that the defendant should have derived any advantage from the deceit, or that he should have colluded with the person who did derive the advantage, and it will be sufficient proof of fraud in these cases to shew, 1st, that the fact, as represented, is false; 2ndly, that the person making the representation had knowledge of a fact contrary to it, and it is no excuse for a party to say that he did not recollect at the time the truthful fact. If the representation amount to an assurance only of a person's ability to answer an obligation, it must, to be binding, be in writing. 9 Geo. IV., c. 14, § 6. *Sugd. Vend. & Pur.*, vol. i. p. 4; *Selw. Nisi Prius*, tit. *Deceit*.

DECEM TALES (ten such). If, when a trial is called on, a sufficient number of jurors do not attend, the trial must be adjourned, and a *decem* or *octo tales* awarded, as at common law; for the 6 Geo. IV., c. 50, § 37, which allows the *tales de circumstantibus* is expressly confined to trials at *Nisi Prius* and the assizes. But before an *alias* or *pluries distringas* with a *tales* for the trial of an issue at bar can be sued out, the preceding writ of *distringas*, with a panel of the names of the jurors annexed, must be delivered to the Master, in order that the issues forfeited by the jurors for their non-appearance may be duly estreated. *Chit. Arch. Prac.* 263.

DECENNARY, a town or tithing, consisting originally of ten families of freeholders. Ten tithings composed an hundred. 1 *Bl. Com.* 114.

Decet tamen principem servare leges, quibus ipse salutus est.—(It behoves indeed the prince to keep the laws by which he himself is preserved.)

DECIES TANTUM, a writ which lay against a juror, who had taken money of either party for giving his verdict, to recover *ten times as much* as the sum taken. 38 Edw. III., c. 12, repealed by 6 Geo. IV., c. 50, § 62.

DECIMATION. The punishing every tenth soldier by lot was termed *decimatio legionis* by the Romans. Sometimes only the twentieth man was punished (*vicesimatio*), or the hundredth (*centesimatio*); also tithing or tenth part.

DECIMÆ, tenths or tithes.

Decimæ debentur parochæ.—(Tithes are due to the parish priest.)

Decimæ de decimatis solvi non debent.—(Tithes are not to be paid from that which is given for tithes.)

Decimæ de jure divino et canonica institutione pertinent ad personam. Dal. 50.—(Tithes belong to the parson by divine right and canonical institution.)

Decimæ non debent solvi, ubi non est annua renovatio; et ex annuatibus renovantibus simul

semel. Cro. Jac, 42.—(Tithes ought not to be paid where there is not an annual renovation, and from annual renovations once altogether.)

DECINERS, DECENNIERS, or DOZINERS, such as were wont to have the oversight of the Friburgs or views of frankpledge, for the maintenance of the public peace. The limit and compass of their jurisdiction was called *decenna*, because it commonly consisted of ten households; as every person, bound for himself and his neighbours to keep the peace, was styled *decennier*. *Bract.*, l. 3, t. 2, c. 15.

DECISIVE OATH [*sacramentum decisionis*], resorted to in the civil law, where one of the parties to a suit, not being able to prove his charge, offers to refer the decision of the cause to the oath of his adversary; which the adversary was bound to accept or tender the same proposal back again; otherwise the whole was taken as confessed by him. *Cod.* 4, 1, 12.

DECLARATION, a proclamation or affirmation, open expression or publication. More properly, in law, a statement, on the plaintiff's part, of his cause of action. In a real action, it is more correctly called the *count*; in a personal, the declaration; but this is now the general term, being that commonly used when referring to real and personal actions without distinction.

The plaintiff must declare, in a personal action, before the end of the term next after the defendant's appearance, otherwise a judgment of *non pros* may be signed. But if no such *non pros* be obtained, then he may declare at any time within a year next after the appearance of the defendant, unless otherwise ordered by the Court or a Judge; but if he do not declare within that period, he will be deemed out of court.

The declaration should correspond with the writ:—1st, in the parties; 2d, in the character in which they sue and are sued; and 3d, in the form of action. It must be entitled in the proper court, and of the day of the month and year on which it is filed or declared. It is delivered to the defendant or his attorney, when he or his attorney enters an appearance; it is filed when plaintiff enters an appearance for the defendant *sec. stat.*; and a notice of declaration filed and particulars of plaintiff's demand are served upon him. *Step. Plead.* 30; *Chit. Arch. Prac.* 134.

Declarations are allowed in certain cases in lieu of oaths. By 5 & 6 Wm. IV., c. 62, for the abolition of unnecessary oaths, any justice of the peace, notary public, or other officer authorised to administer an oath is empowered to take voluntary declarations in the form specified in the act. And any person wilfully making such declaration false, in any material particular, shall be guilty of a misdemeanour.

DECLARATION OF INSOLVENCY. By 5 & 6 Vict., c. 122, § 22, if any trader shall file, in the office of the Lord Chancellor's

secretary of bankrupts, a declaration in writing, signed by such trader, and attested by an attorney or solicitor, that he is unable to meet his engagements, every such trader shall be deemed thereby to have committed an act of bankruptcy at the time of filing such declaration, provided a fiat in bankruptcy shall issue against such trader within two months from the filing of such declaration; and a copy of such declaration, purporting to be certified by the said secretary or his clerk as a true copy, shall be received as evidence of such declaration having been filed. This simplifies the same act of bankruptcy under the 6 Geo. IV., c. 16, § 6, and renders the advertisement in the Gazette unnecessary.

DECLARATION OF TRUST. To prevent the inconvenience which arose from parol declarations and secret transfers of uses, the 29 Car. II., c. 3, § 7, requires that all declarations or creations of trusts, or confidences of any lands, tenements, or hereditaments, shall be manifested and proved by some writing signed by the party who is by law enabled to declare such trust, or by his last will in writing: and by § 9, that all grants and assignments of any trust or confidence, shall likewise be in writing, signed by the party granting or assigning the same, or by such last will or devise. The statute, it is said, does not extend to the declaration or creation of trusts of mere personalty. *Sand. Uses and Trusts*, vol. 1, p. 342.

DECLARATION OF USES must now be in writing. 29 Car. II., c. 3, § 7.

The conveyances by bargain and sale and covenant to stand seised are in fact nothing more than declarations of uses; for the use being served out of the seisin of the bargainer and covenantor in those conveyances, they merely serve to declare the use to the bargainee and covenantee. But upon such conveyances as transmute the possession, the use may be declared by a deed or writing distinct from the conveyance by which the possession is transferred. Yet, upon the conveyances by feoffment and release, it is now universally the practice to declare the use in the same deed immediately after the habendum. *Sand. Uses and Trusts*, vol. 1, p. 219. See **APPOINTMENT**.

DECLARATOR, an action whereby something is prayed to be declared in our favour. *Scotch Law*.

DECLARATOR OF PROPERTY, when the complainer, narrating his right to lands, desires he should be declared sole proprietor, and all others discharged to molest him any way. *Ibid.*

DECLARATOR OF REDEMPTION, when, after a process before the Lords against the wadsetter who refuses to renounce after the order of redemption is used, the Lords force him to renounce, and by a decret declare the lands redeemed. *Ibid.*

DECLARATORY ACTIONS, those wherein the right of the pursuer is craved to be declared; but nothing claimed to be done by the defender. *Ibid.*

DECLINATORY PLEA, a plea of sanctuary, also pleading benefit of clergy before trial or conviction. Abolished by 6 & 7 Geo. IV., c. 28, § 6.

DECOCTOR, a bankrupt.

DECOLLATION, the act of beheading.

DE CONSUETUDINIBUS ET SERVITIIS, a real writ to recover rent in arrear. Abolished by 3 & 4 Wm. IV., c. 27.

DE CORPORE COMITATUS (from the body of the county).

DECREES [*decretum*, Lat.], an edict, a law. Also the judgment of a court of equity.

Speaking of decrees in equity generally, without reference to the subject of the suit, they may be classed thus:—1st, decrees on the hearing of the cause in the presence of all parties, in which case, if the plaintiff have any equity, there is a decree embracing the objects of the suit, which varies with the nature of the suit and the relief prayed; 2d, decrees by default, as against parties who do not appear, in which case the plaintiff takes such decree as he can stand by; 3d, decrees by consent, in which case the form of the decree depends upon the mutual agreement of the parties; and 4th, decrees taking the bill *pro confesso*, in which case the decree is according to the case made by the bill. *Seton's Forms of Decrees in Equity*.

Courts of equity may adjust their decrees so as to meet different exigencies, and they may vary, qualify, restrain, and model the remedy, so as to suit it to mutual and adverse claims, controlling equities, and the real and substantial rights of all the parties. Nay, more, they can bring before them all parties interested in the subject-matter, and adjust the rights of all, however numerous; whereas courts of common law are compelled to limit their enquiry to the very parties in the litigation before them, although other persons may have the deepest interest in the event of the suit. So that one of the most striking and distinctive features of courts of equity is, that they can adapt their decrees to all the varieties of circumstances which may arise, and adjust them to all the peculiar rights of all the parties interested; whereas courts of common law are bound down to a fixed and invariable form of judgment in general terms, altogether absolute for the plaintiff or defendant. 1 *Story's Eq. Jurisp.* 22.

DECREET COGNITIONIS CAUSA, when the apparent heir is called to hear the debt constitute, it not being already clearly constitute by writ; and the appearing heir renounces, being charged to enter heir. It is against executors, when the nearest of kin are pursued by the executor creditor, who has no writ to instruct his debtor to hear the debt constitute. *Scotch Law*.

DECREET OF COMPRISING, when, at the day appointed in the letters, the debtor being called, the messenger offers him his lands for the money, which if he have not ready, the inquest declares the lands to belong to the creditor for his payment. *Ibid.*

DECREET OF EXONERATION, a judgment of the commissioners against the creditors or nearest of kin; wherein it is proven, that the executor has executed the whole testament, and that all is exhausted by lawful sentences. *Ibid.*

DECREET OF LOCALITY, modifying a stipend for a minister, dividing and proportioning the same among the heritors. *Ibid.*

DECREET OF MODIFICATION, that which modifies a stipend to a minister, but does not divide or apportion it among the heritors. *Ibid.*

DECREET OF VALUATION, a sentence of the lords, (who are now in the place of the commission), determining the extent and value of teinds. *Ibid.*

Decreta conciliorum non ligant reges nostros. Mo. 906.—(The decrees of councils bind not our kings.)

DECRETALS, a volume of the canon law, forming the second part, so called as containing the decrees of sundry Popes; or a digest of the canons of all the councils that pertained to one matter under one head.

Decretum est sententia lata super legem.—(A decree is a sentence laid upon the law.)

DECROWNING, the act of depriving of a crown.

DECURIARE, to bring into order.

DEDBANA, an actual homicide or manslaughter.

DEDI ET CONCESSI (I have given and granted). The operative words generally used in grants, &c. The word "give" or the word "grant" in a deed, executed after first day of October, 1845, shall not imply any covenant in law in respect of any tenements or hereditaments, except so far as the word "give" or the word "grant" may, by force of any act of Parliament, imply a covenant. 8 & 9 Vict., c. 106, § 4.

DEDICATION-DAY [*festum dedicationis*], the feast of dedication of churches, or rather the feast day of the saint and patron of a church, which was celebrated not only by the inhabitants of the place, but by those of all the neighbouring villages who usually came thither; and such assemblies were allowed as lawful; it was usual for the people to feast and to drink on those days; and in many parts of England they still meet every year in villages for this purpose, which days are called feasts, revels, or wakes. *Cowel*.

DE DIE IN DIEM (from day to day).

DEDIMUS POTESTATEM (we have given the power), a writ or commission given to one or more private persons for the speeding some act appertaining to a Judge, or some court; and it is granted most commonly upon suggestion that the party who is to do something before a Judge, or in court, is so weak that he cannot travel; as where a person lives in the country, to take an answer in Chancery, or to examine witnesses in a cause depending in that court. All commissions to take answers in Chancery are to be made returnable without delay; and a defendant in a country cause is not to

be permitted to crave the common *dedimus*.
Orders, 8th May, 1845, 43.

On renewing the commission of the peace there issues a writ of *dedimus potestatem* out of Chancery, directed to some ancient Justice, to take the oath of him who is newly inserted.

Formerly the Judges would not suffer litigants to appoint attornies in any action or suit without this writ; but now, by statute, the plaintiff or defendant may appoint attornies without such process.

DEDITION, the act of yielding up anything; surrendry.

DEED [*dæd*, Sax., *daed*, Dut.], an instrument on parchment or paper, comprehending a contract or bargain between party and party, for the matters therein contained. It is called a deed (in Latin, "*Factum*"), because it is the most solemn and authentic act that a man can possibly perform relating to the disposition of his property; a man, therefore, is always estopped by his own deed; he is not permitted to aver or prove anything in contradiction to what he has once so solemnly and deliberately avowed. Of deeds, some are called indentures (*instar dentium*), which are conveyances made between two or more parties, indented or cut unevenly at the top, which serves for little other purpose than to give a name to this species of deed. When made between two parties, it may begin: This indenture *bipartite*; between three *tripartite*, or *quadripartite*, *quinguepartite*, according to the number of the parties; but these words are not essential, and are now more frequently omitted than inserted. Several copies of the indenture are often made to be delivered to each of the several parties; the copy executed by the grantor was called the original, and the remaining copies executed by the other parties, the counterparts; but it is now the practice for all the parties to execute every part, which renders them all originals. The other species of deeds are deeds-poll, which are made by one party only, are not indented, but *polled*, or shaved quite even at the top; hence their name: a bond is an example.

The following requisites must be observed in the preparation of deeds:—There must be persons able to contract and he contracted with, for the purposes intended by the deed; the chief persons under disability to contract are infants, *femmes covert*, persons *non compotes mentis*, aliens, tenants in tail, ecclesiastical persons, and those attainted of treason or felony. There must be a thing to be contracted for. The deed must be founded upon a good or valuable consideration; a good consideration is that of blood, or of natural love and affection, as when a person grants an estate to a near relation, being founded on motives of generosity, prudence, and natural duty; such deeds, however, are voluntary, and equity sets them aside in favour of creditors, who were creditors at the time of the execution of such deeds,

and also in favour of *bond fide* purchasers: a valuable consideration is such as marriage (which is the highest consideration known to the law), money, or the like, which is an equivalent for the grant, and, therefore, founded in motives of justice. The deed must be written, or (as is now the case with many instruments, such as leases, bonds, policies of insurance, &c.), printed, to express the contents. It may be in any character and in any language, but it must be either upon paper or parchment. This is in conformity with the Statute of Frauds (29 Car. II., c. 3), which enacts, "that no lease, estate, or interest in lands, tenements, or hereditaments, made by livery of seisin, or by parol only (except leases not exceeding three years from the making, and whereupon the reserved rent is at least two-thirds of the real value), shall be looked upon as of greater force than a lease or estate at will; nor shall any assignment, grant, or surrender of any instrument in any freehold hereditaments be valid, unless in both cases the same be put into writing, and signed by the party granting, or his agent, lawfully authorised in writing." Some of our Chancellors have intimated a doubt whether an agreement ought to be enforced which has not been signed by or on behalf of both parties; but, however, equity is in the habit of decreeing specific performance of parol contracts, partly and substantially performed, in contradiction to this positive statute. And this jurisdiction is founded upon pure moral principles, for it would be decidedly against conscience to suffer a party, who had entered into lands and expended his money, on the faith of a parol agreement, to be treated as a trespasser, and for the other party, in fraud of his engagement (although only verbal), to enjoy the advantage of the money so laid out. A deed must always have the regular stamps, imposed on it by the several statutes for the increase of the public revenue, else it cannot be given in evidence. The matter written must be legally and orderly set forth, the language must be sufficient to specify the agreement and bind the parties, and this sufficiency must be left to the courts of law or equity to determine. The wisdom of experience has settled the formal parts of a deed in this order:—The premises—this expression, in its popular sense, means the land granted, or other subject of the conveyance, but here it is used to set forth the number and names of the several parties, with their additions and titles. The parties should be classified in parts according to their respective interests, thus:—where two or more persons have a joint-interest, they should be of the same part, but whenever they have each a distinct estate (though it be in undivided parts), or their interests vary in any respect, the parties should then be of so many several parts: and so far as it is applicable, the parties should be arranged in the following order:—1st, those who are to grant, assign,

or otherwise convey any estate or interest in the premises (and of these, the legal estate in fee before the equitable estate; and parties in whom the largest quantity of estate, legal or equitable, vests, to precede those who are entitled to lesser estates or interests). 2dly, Parties not having any estate or interest in the premises (as mere consenting parties, whose consent, however, is necessary, covenantors to produce title deeds, or the like). 3dly, Those who are to take under the deed, and of these, such as take the ownership, before those who are only interested as trustees. And, lastly, persons who neither take nor receive, but are merely inserted to fix them with notice of the deed, as legatees, creditors, trustees, or executors under a will. The premises also contain the recitals (if any) of such deeds, agreements, or matters of fact, as are necessary to explain the reasons upon which the present transaction is founded, also the consideration upon which the deed is made, then follows the certainty of the grantor, grantee, and thing granted. It is to be observed that the recital of a deed is not conclusive; because it is no direct affirmation, for otherwise, by feigned recitals in a true deed, men might make what titles they pleased, since false recitals are not punishable. And, as a general rule, a person not named in the premises, cannot take anything by the deed, though he is afterwards named in the *habendum*, because the premises of a deed make the gift; when the lands, therefore, are given to one in the premises, the *habendum* cannot give any share of them to another, because that would be to retract the gift made, and consequently to make a deed repugnant in itself. Next come the *habendum* and *tenendum*. The *habendum* properly determines what estate or interest is granted by the deed, though this is sometimes done in the premises, when the *habendum* may lessen, enlarge, explain, or qualify, but not totally to contradict or be repugnant to the estate granted in the premises. The *tenendum*, "and to hold," is now only retained, and the *habendum* merely inserted from custom. Then follow the terms of stipulation (if any) upon which the grant is made, as in leases, the *reddendum*, or reservation of rent; another of the terms upon which a grant can be made is a condition, which is a clause of contingency, upon the happening of which, the estate granted may be defeated and determined. Then come the covenants or conventions, which are clauses of agreement contained in a deed, whereby either party may stipulate for the truth of certain facts, or may bind himself to give or perform something to the other. A covenant being part of a deed, is subject to the general rules for the exposition of deeds, as, 1st, to be always taken most strongly against the covenantor, and most in advantage of the covenantee; 2dly, to be taken according to the intent of the parties; 3dly, to be construed, *ut res magis valeat, quam pereat*,

i. e., that the thing may be valid rather than perish; 4thly, when no time is limited for its performance, it must be done in a reasonable time. Then comes the conclusion, mentioning the time and execution of the deed, either expressly, or by referring to some day or year before mentioned. A deed, however, is good if it have no date, or has a false or even an impossible date, provided the real date of its delivery can be proved. Dates were introduced in the reigns of Edwd. II. and III., and it is always safe to add them. The deed must be read correctly before execution, if any of the parties desire it. The deed must, since *the 54 Geo. III., c. 168*, be signed, sealed, and delivered by the parties themselves, or their certain attorneys. A deed takes effect only from its delivery, for if the date of the deed be false or impossible, the delivery ascertains the time of it. A delivery may be either absolute, i. e., to the party or grantee himself, or to a third person, to hold until the grantee perform certain conditions, in which case it is delivered as an escrow, i. e., as a scrawl or writing which is not to take effect as a deed till the conditions be performed, and then it is a deed to all intents and purposes. The last requisite is the attestation or execution of it in the presence of witnesses; this is practised rather for preserving the evidence than for constituting the essence of the deed.

It follows, then, that a deed is void, *ab initio*, if it want either proper parties—a proper subject—a good or valuable consideration—writing or printing on paper or parchment, duly stamped—sufficient and legal words, properly disposed—reading, if desired, before execution, or signing, sealing, or delivery.

A deed may also be avoided by matter *ex post facto*, as by rasing, interlining, or other alteration in any material part, unless a memorandum be made thereof at the time of execution and attestation;—by breaking off or defacing the seal;—by delivering it up to be cancelled;—by the disagreement of such whose concurrence is necessary, in order for the deed to stand, as a husband, where a *feme covert* is concerned, or, by a decree of the Court of Chancery, when it is proved that the deed was obtained by fraud, force, or other foul practice, or is proved to be a forgery.

DEED-POLL, a single deed in the form of a manifesto or declaration to all the world of the grantor's act and intention. If there be no recital it usually speaks in the first person, but where recitals are introduced it speaks in the third person. The doctrine of estoppel operates on a deed-poll differently than upon an indenture:—e. g., if a lease for years be made by deed-poll, and the lessor had no right so to deal with the subject of the lease, it would not estop the lessee to aver that the lessor had nothing in those lands at the time of the lease made, because the deed-poll is only the deed of the lessor

and made in the first or third person, whereas an indenture is the deed of both parties, and both are, as it were, put in and shut up by the indenture. This, however, is where both the parties seal and execute the indenture as they may and ought, for otherwise, if the lessor only seal and execute it, the lessee seems to be no more concluded than if the lease were by deed-poll; for it is only the sealing and delivery of the indenture as his deed that binds the lessee, and not his being barely named therein, for so he is in the deed-poll; but that being only sealed and delivered by the lessor, can only bind him, and not the lessee, who is not to seal and execute it; yet, it should seem that such lease by deed-poll binds the lessor himself as much as if it were by indenture, because it is executed on his part with the very same solemnity, and therefore, it should seem, he is bound by such lease by way of estoppel. *Bac. Abr., tit. Leases (O); Co. Lit. 47, b.*

DEEMSTERS [*dema*, Sax., a judge or umpire], a kind of Judges in the Isle of Man and in Jersey, who, without process or any charge to the parties, decide all controversies in that island; and they are chosen from among the parties themselves. *Cam. Brit.*

DEER-FOLD, a park or deed-fold.

DEER HAYES, engines or great nets made of cord to catch deer. 19 Hen. VIII., c. 11.

DE ESSENDO QUIETUM DE TOLONIO, a writ which lay for those who were by privilege free from the payment of toll, on their being molested therein. *F. N. B. 226.*

DE EXPENSIS CIVIUM ET BURGENTIUM, an obsolete writ addressed to the sheriff to levy the expences of every citizen and burghess of Parliament. 4 *Inst.* 46.

DE EXPENSIS MILITUM, a similar writ to the last, to levy the expences of the Knights of the Shire for attendance in Parliament.

DE FACTO, of a deed in fact, opposed to *de jure*, of right lawfully.

DEFAMATION, scandalous words spoken concerning another, tending to the injury of his reputation, punishable either by action on the case at common law, or by statute, or the ecclesiastical laws, when it ought to have these three incidents: (1.) that it concerns matters spiritual and determinable in the ecclesiastical courts, as for calling a man a heretic, schismatic, adulterer, fornicator, &c.; (2.) that it be a matter spiritual only; for if it concern anything determinable at the common law, the ecclesiastical Judges cannot take cognizance of it.

Suits for defamation are frequently instituted in the ecclesiastical courts, but as no damages are there recoverable, and there is no penance excepting compulsory admissions of the complainant's innocence, asking forgiveness, and paying costs, there is not much inducement to sue. In case of verbal slander, when the opprobrious words merely imputed an immorality, punishable only in the ecclesiastical court, as calling a woman a *whore* or *bawd*, or less explicit charge of fornication, if no special damage can be

proved, a suit in the spiritual court is the only remedy, and in many cases it may with propriety be resorted to. As regards personal consideration the humiliating sentence of an ecclesiastical court, compelling such admission of innocence and apology, and payment of costs, may afford some degree of satisfaction to the insulted individual. Actions at law for slander are of more frequent occurrence, but unless attended with very aggravated circumstances, they are sometimes treated with ridicule; but there is no remedy at law for verbal slander, merely imputing some ecclesiastical or spiritual offence, as fornication. The remedy in the ecclesiastical courts for slander is limited to six calendar months, in the common law courts to two years. *Burn's Eccle. Law, "Defamation"; Starkie on Slander, 32.*

DEFAULT, omission of that which we ought to do; neglect.

When a defendant has a day certain given him in court, and is then demandable, and being demanded does not appear, the court thereupon gives judgment against him by default. The defendant allows judgment by default either intentionally or through mistake or neglect; intentionally, where he has no merits, or where he does so according to a previous agreement with the plaintiff; through mistake when he delivers a plea or rejoinder, &c., so informal or defective that it is treated as a nullity; and through neglect, when perhaps he has no merit, but omits to plead, rejoin, &c., within the time limited by the rules of the court for that purpose. This is an implied confession of the action. See **JUDGMENT BY DEFAULT**. *Chit. Arch. Prac. 700.*

Where a defendant makes default at the hearing of a cause in equity, the decree is absolute in the first instance, without giving the defendant a day to shew cause, and such decree shall have the same force and effect as if the same had been a decree nisi in the first instance, and afterwards made absolute in default of cause shewn by the defendant. *Orders, 26th August, 1841, 44; Browne v. Smith, 5 Jur. 1195.*

DEFAULTER, one who makes default.

DEFEASANCE [*defaisance*, Fr., defeat], the act of annulling or abrogating any contract or stipulation. It is of two kinds: (a) a collateral deed made at the same time with a feoffment or other conveyance containing certain conditions, upon the performance of which the estate then created may be defeated or totally undone. These defeasances are of two kinds,—those which relate to estates of freehold and inheritance, and those which affect chattels and executory interests, such as rents, annuities, conditions, warranties, writs, and the like. But a defeasance is now, however, seldom resorted to, as it is much preferable to make the conditions apparent in the deed, so that the deed shall be complete in itself. For as the conveyance is absolute, should the defeasance, which is contained in a separate instrument, be lost,

the proof of the condition might be difficult and often impossible. (β) A defeasance on a bond, recognizance, judgment recovered, or warrant of attorney, is a condition, which, when performed, defeats that in the same manner as the foregoing defeasance of an estate. It differs from the common condition of a bond, in that the condition is always inserted in the bond itself, the defeasance is generally endorsed on it, but it may be by a separate subsequent deed.

To make a good defeasance it must be, (1,) by deed, or in case of endorsement by deed-poll; (2,) it must recite the deed it relates to, or at least the most material part thereof; or, in case of endorsement, refer thereto; (3,) it must be between the same parties that were parties to the first deed; (4,) it must be made at the time or after the first deed, but not before; (5,) it ought to be made of a thing defeasable. 1 *Inst.* 226.

DEFEASIBLE [*defaire*, Fr., to make void], that which may be annulled or abrogated.

DEFECTUM, challenge *propter*. See **CHALLENGE**.

DEFENCE [*defensio*, Lat.], popularly a justification, protection, or guard; in law, an opposing or denial by the defendant of the truth or validity of the plaintiff's complaint.

At common law, a defendant, after a plaintiff has declared, must either demur or plead. One or other of these courses he is bound to take, if he mean to maintain his defence. If he do neither, but confess the plaintiff's right, or say nothing, the court immediately gives judgment for the plaintiff: in the former case as by confession—in the latter, by *non pros* or *nil dicet*. *Step. Plead.* 150.

In equity, the matters of defence which may be relied on, are in their nature susceptible of two divisions—viz. (1), into those which are dilatory, which merely dismiss, or suspend, or obstruct the suit, without touching the merits, until the impediment or obstacle insisted on is removed; and (2), into those which are peremptory and permanent, and go to the entire merits of the suit.

Dilatory defences may be again divided into four sorts; first, to the jurisdiction of the court, insisting that the bill is not preferred to the proper tribunal, which is authorized to entertain the case upon its merits; secondly, to the person, that the bill is preferred by or against an improper person, not competent to maintain or defend it; thirdly, to the form of proceedings, that the suit is irregularly brought, or defective in its appropriate allegations or parties; and, fourthly, to the propriety of maintaining the suit itself, because of the pendency of another suit for the same controversy.

Peremptory or permanent defences, may be divided into two sorts; first, those which insist that the plaintiff never had any right to institute the suit; and, secondly, those which insist that the original right, if any, is extinguished or determined. Under the

former head may be included the following defences:—(1), that the plaintiff has not a superior right to the defendant; (2), that the defendant has no interest; and (3), that there is no privity between the plaintiff, or any other right to sustain the suit. Under the latter head may be included the following defences:—(1), that the right is determined by the act of the parties; or (2), that it is determined by operation of law.

The *modes* of defence are four—viz. (1), by demurrer, by which the defendant demands the judgment of the court, whether he shall be compelled to answer the bill or not; (2), by plea, whereby he shows some cause why the suit should be dismissed, delayed, or barred; (3), by answer, which, controverting the case stated by the bill, confesses and avoids it; or traverses and denies the material allegations in the bill; or, admitting the case made by the bill, submits to the judgment of the court upon it; or relies upon a new case, or upon new matter stated in the answer, or upon both; (4), by disclaimer, which seeks at once a determination of a suit, by the defendant's disclaiming all right and interest in the matter sought by the bill. All or any of these modes of defence may be joined; and by the 36th Order, 30th August, 1841, it is ordered, that no demurrer or plea shall be held bad and overruled upon argument, only because it shall not cover so much of the bill as it might by law have extended to. And by the 37th *id.*, no demurrer or plea shall be held bad and overruled upon argument, only because the answer of the defendant may extend to some part of the same matter as may be covered by such demurrer or plea. *Story's Eq. Plead.* 345.

In criminal matters, when a prisoner is brought to the bar and arraigned, he either confesses the charge, stands mute of malice, or does not answer directly to the charge, which may be entered as a plea of not guilty, or pleads to the jurisdiction, or in abatement, or demurs, or pleads specially in bar, or generally, that he is not guilty. In addition to these several modes of defence, there were formerly what were called declinatory pleas—the plea of sanctuary and the plea of clergy—both now abolished. *Arch. Plead.*, by Jervis, 72.

The defence in ecclesiastical courts may be called the answer, in which the defendant denies, extenuates, or justifies.

The defence of one's self, or the mutual and reciprocal defence of such as stand in the relations of husband and wife, parent and child, master and servant, is a right which belongs to persons. In these cases, if the party himself, or any of these his relations, be forcibly attacked in his person or property, it is lawful for him to repel force by force; and the breach of the peace which happens is chargeable upon him only who began the affray. Self-defence, therefore, as it is justly called the primary law of nature, so it is not, neither can it be in fact,

taken away by the law of society. In the English law particularly it is held an excuse for breaches of the peace, nay, even for homicide itself: but care must be taken that the resistance does not exceed the bounds of mere defence and prevention; for then the defender would become an aggressor. *Step. Com. vol. iii. p. 357.*

DEFEND, to forbid or deny.

DEFENDANT, the person sued in a personal action, or indicted, as tenant is he who is sued in a real action; but the former term, however, is applicable to actions of every description, and is the expression most commonly used.

DEFENDEMUS, a word used in grants and donations, which binds the donor and his heirs to defend the donee, if any one go about to lay any incumbrance on the thing given, other than what is contained in the deed of donation. *Bract. l. ii., c. 16.*

DEFENDER OF THE FAITH [*fidei defensor*], a peculiar title belonging to the Sovereign of England, as *Catholic* to the King of Spain, and *Most Christian* to the King of France. These titles were originally given by the Popes of Rome; and that of *Defensor Fidei* was first conferred by Pope Leo X., on our King Henry VIII., as a reward for writing against Martin Luther; and the bull for it bears date *quinto Idus, Octob. 1521*. Yet the Pope, on King Henry's suppressing the houses of religion at the time of the Reformation, not only sentenced him to be deprived of this title, but deposed also from his Crown; though in the thirty-fifth year of his reign, this title was confirmed by Parliament, and has continued to be used by all succeeding sovereigns to this day. *Encyc. Lond.*

DEFENDERE, *se per corpus suum*. To offer duel or combat as a legal trial and appeal. Abolished by 53 Geo. III. See **BATTEL**.

DEFENDERE unica manu, to wage law; a denial of an accusation upon oath. See **WAGER OF LAW**.

DEFENERATION [*de*, of, and *facero*, Lat., to lend upon usury], the act of lending money on usury.

DEFENSA, a park or place fenced in for deer.

DEFENSIVA, a lord or earl of the marches, who were the wardens and defenders of their country. *Cowel*.

DEFENSIVE ALLEGATION, the mode of propounding circumstances of defence by a defendant in the spiritual courts, to which he is entitled to the plaintiff's answer upon oath, and may thence proceed to proofs as well as his antagonist. *Step. Com. vol. iii. p. 720.*

DEFENSO, that part of any open field or place that was allotted for corn or hay, and upon which there was no common or feeding, was anciently said to be *in defenso*: so of any meadow ground that was laid in for hay only. It was likewise the same of a wood where part was enclosed or fenced, to secure the growth of the underwood from the injury of cattle. *Cowel*.

DEFENSUM, an enclosure of land, any fenced ground.

Deficiente uno sanguine non potest esse heres. 3 Co. 41.—(In one wanting blood, he cannot be a heir.)

De fide et officio judicis non recipitur questio; sed de scientiâ sive error sit juris aut facti. Bacon.—(Concerning the credit and duty of a Judge, a question cannot arise; otherwise concerning his knowledge, whether he be mistaken as to the law or fact.)

It is an ancient rule that a Judge of record is not liable to an action for any thing done by him in his judicial character. This immunity is given for the public good and advancement of justice; for it is obvious that to administer law properly, the Judge should be free in thought and independent in character. A Judge, however, is not excused for neglect of duty or misconduct, *à fortiori* for corruption.

DEFINITIVE SENTENCE, the final judgment of a spiritual court, in opposition to provisional or interlocutory.

DEFORCEMENT, the holding of any lands or tenements to which another person has a right; so that this includes as well an abatement, an intrusion, or a disseisin, as any other species of wrong, by which he that has a right to a freehold is kept out of possession. It is such a detainer of the freehold from him having the right of property, but not the possession under that right, which falls within none of the injuries of abatement, intrusion, disseisin, or discontinuance. 3 *Step. Com.* 483.

DEFORCEOR, or **DEFORCOR**, he that overcomes and casts out by force. *Blount*.

DEFORCIANT, the person against whom the fictitious action of fine was brought. Abolished by 3 & 4 Wm. IV., c. 74.

DEFORCIATO, a distress; a holding of goods for the satisfaction of a debt. *Paroch. Antiq.* 239.

DEFOSSION [*de*, of, and *fodeo*, Lat., to dig], the punishment of being buried alive. *Ash.*

DE FRANGENTIBUS PRISONAM, *statute of*, 1 Edw. II., st. 2, which enacts that no person shall have judgment of life or member for breaking prison, unless committed for some capital offence.

DEFRAUDATION, privation by fraud.

DEFUNCT, one that is deceased, a dead man or woman. *Encyc. Lond.*

DEGRADATION, a deprivation of dignity; dismissal from office. An ecclesiastical censure, whereby a clergyman is divested of his holy orders. There are two sorts by the canon law: one, *summary*, by word only; the other *solemn*, by stripping the party degraded of those ornaments and rights which are the ensigns of his degree. Degradation is otherwise called deposition, but the canonists have distinguished between these two terms; deeming the former as the greater punishment of the two. There is likewise a degradation of a lord or knight at common law, and also by act of Parliament, 13 Car. II., c. 16

DEHORS [Fr.], foreign to, out of the point in question.

De gratiâ speciali, certâ scientiâ, et mero motu, talis clausula non valet in his in quibus præsumitur principem esse ignorantem. 1 Co. 53.—(Concerning special grace, certain knowledge, and mere motive, a clause does not prevail in those things in which it is presumed that the prince was ignorant.)

De grossis arboribus decimæ non dabantur, sed de sylvâ cadudâ decimæ dabuntur. 2 R. R. 123.—(Of whole trees, tithes are not given; but of wood used to be cut, tithes are given.)

DE IDIOTA INQUIRENDO, an obsolete common law writ to enquire whether a man be an idiot or not, which must be tried by a jury of twelve men; and if they find him *purus idiota*, the profits of his lands and the custody of his person may be granted by the Sovereign to some subject who has interest enough to obtain them. Now no longer practised. *F. N. B.* 232.

DEI JUDICIUM, the old Saxon trial by ordeal, so called because they thought it an appeal to God for the justice of a cause, and verily believed that the decision was according to the will and pleasure of Divine Providence. See **ORDEAL**.

DE INCREMENTO (of increase).

DE INJURIA SUA PROPRIA ABSQUETALI CAUSA (more compendiously called the traverse *de injuriâ*), a species of traverse by replication in pleading, which varies from the common form, and which, though confined to particular actions, and to a particular stage of the pleading, is of frequent occurrence. It always tenders issue; but on the other hand, differs (like many of the general issues), from the common form of a traverse, by denying in general and summary terms, and not in the words of the allegation traversed.

This species of traverse occurs in the replication in actions of trespass, trespass on the case (including the species of assumpsit), and in the plea in bar in replevin, but is not used in any other stages of the pleading. In these actions it is the proper form, when the pleading to which it is an answer consists merely of matter of *excuse* of the alleged trespass, grievance, breach of contract, or other cause of action. But if the pleading to be answered consists of or comprises matter of title, or interest in the land, &c., the commandment of the plaintiff, or authority derived from him, matter of record, of discharge, satisfaction, or release, in any of these cases, the traverse *de injuriâ* is generally improper, and the denial of any of these matters should be in the common form, that is, in the words of the allegation traversed.

Where this replication has been improperly adopted, instead of an ordinary traverse, the objection must be taken by way of special and not of general demurrer. Consult *Crogate's case*, 8 Rep. 67 a; 2 Saund. 295, n. (1); *Stephen's Plead.* 190.

DEIS, or **DAIS**, the high table of a monastery. See **DAEUS**.

DEJURATION [*dejero*, Lat.], a taking of a solemn oath.

De jure decimarum, originem ducens de jure patronatus tunc cognitio spectat ad legem civilem, i. e., communem. Godh. 63.—(Concerning the right of tithes, the recognition of it, then, deducing it from the right of the patron, looks to the civil law, that is, the common law.)

De jure judices, de facto juratores, respondent.—(The judges answer to the law, the jury to the fact.)

A fundamental rule of the common law, upon which the whole system of pleading is built. "It is of the greatest consequence," said Lord Hardwicke, "to the law of England, and also to the subject, that the power of the judge and jury be kept distinct: that the judge determine the law, and the jury the fact: if ever they come to be confounded, it will prove the confusion and destruction of the law of England."

DELATOR, an accuser, an informer.

DELATURA, an accusation, also the reward of an informer.

DEL CREDERE [a phrase borrowed from the Italians, exactly equivalent to our word guaranty or warranty, or the Scotch term warrandice], an agreement, so called, by which a factor, for an additional premium, when he sells goods on credit, becomes bound to warrant the solvency of the purchasers, and renders himself liable at all events to the payment of the price of the goods sold. It is in fact a guaranty. *Story's Agency*, 28.

DELECTUS PERSONÆ (the choice of a person). It is an established principle of the common law, that, as a partnership can commence only by the voluntary contract of the parties; so, when it is once formed, no third person can be afterwards introduced into the firm as a partner, without the concurrence of all the partners who compose the original firm. It is not sufficient, to constitute the new relation, that one or more of the firm shall have assented to his introduction; for the dissent of a single partner will exclude him, since it would, in effect, otherwise amount to a right of one or more of the partners to change the nature and terms and obligations of the original contract, and to take away the *delectus personæ*, which is essential to the constitution of a partnership. So stubborn, indeed, is this rule, that even the executors and other personal representatives of a partner do not, in that capacity, succeed to the state and condition of that partner. The Roman law is direct to the same purpose. It even pressed the rule to a still further extent, and held that a positive stipulation between the partners at the commencement of the partnership, that the heir or personal representative of a partner should succeed him in the partnership, was inoperative and incapable of being enforced. The common law, however, treats such a stipulation as valid and obligatory. This also, according to Pothier, was the doctrine of the old French law; and the modern code of France has

expressly adopted it, in opposition to the Roman law. Such is the law of Scotland. *Story on Partnership*, 6.

Delegata potestas non potest delegari. 2 Inst. 597.—(A delegated power cannot be delegated.)

The Crown may, however, delegate to an individual the power of appointing the first members of a corporation created by charter under 1 Vict. c. 78; or a person to ascertain the individuals who compose the class to whom the charter is granted.

DELEGATES, *the High Court of*, the appeal tribunal from the Ecclesiastical and Admiralty Courts. Abolished; the Judicial Committee of the Privy Council being constituted the immediate court of appeal in such cases. 2 & 3 Wm. IV., c. 92; 3 & 4 Wm. IV., c. 41; 6 & 7 Vict., c. 38.

DELEGATION, a sending away; a putting into commission; the assignment of a debt to another; the entrusting another with a general power to act for the good of those who depute him.

Delegatus debitor est otiosus in lege. 2 Buls. 148.—(A delegated debtor is hateful in law.)

Delegatus non potest delegare.—(A delegate cannot delegate.)

The person to whom any office or duty is delegated, cannot lawfully devolve the duty upon another, unless he be expressly authorised so to do. An exception to this maxim arises from an implied authority by the recognised usage of trade; as, for instance, in the case of an architect or builder, who employs a surveyor to make out the quantities of the building proposed to be erected; here the civil law maxim applies—in *contractis tacite insunt quæ sunt moris et consuetudinis*—terms which are in accordance with, and warranted by custom and usage, may, in some cases, be tacitly imported into contracts.

Deliberandum est diu quod statuendum est semel. 12 Co. 74.—(That, which is to be resolved once for all, should be long deliberated upon.)

DELICTUM, challenge *propter*. See **CHALLENGE**.

Delinquens per iram provocatus puniri debet mitius. 3 Inst. 55.—(A delinquent provoked by anger ought to be punished more mildly.)

DELIVERANCE, *second, writ of*. The judgment of *non pros* in replevin at common law is, that the defendant shall have a return of the goods replevied, and his costs. The plaintiff, however, is not prevented by this judgment from proceeding, for he may sue out the judicial writ of second deliverance, in execution of which, the sheriff must again take the goods from the defendant and deliver them to the plaintiff, or the writ will operate in the sheriff's hand as a *supersedeas* of the writ *de retorno habendo*, if the latter writ have not as yet been executed. The proceedings upon this writ are the same as in ordinary cases of replevin, and if the defendant have judgment either upon verdict, demurrer, or of *non pros*, it is for a return irreplevisable, and he shall have a writ *de*

retorno habendo, which being executed, the plaintiff cannot have any further writ of deliverance. *Chit. Arch. Prac.* 799.

DELIVERY OF A DEED, a requisite to a good deed; it is given by the party himself, or his certain attorney, and expressed in the attestation—"signed, sealed, and delivered." A delivery is either absolute, that is, to the party or grantee himself, or conditional, to a third person, to hold until the grantee have complied with certain terms of convention. See **DEED**.

DELIVERY OF DEEDS. Where a bill in equity, seeking a discovery of deeds and writings, prays relief founded on the deeds or writings, of which the discovery is sought; if the relief so prayed be such as might be obtained at law, (if the deeds or writings were in the custody of the plaintiff,) he must annex to his bill an affidavit that they are not in his custody or power, and that he knows not where they are, unless they are in the hands of the defendant; otherwise the bill will be demurrable. *Story's Eq. Plead.* 375.

DE LUNATICO INQUIRENDO, writ, a process issued to enquire into the condition of a person's mind. The Lord Chancellor, to whom by special authority from the Sovereign the custody of idiots and lunatics is usually intrusted, upon petition or information, grants a commission in the nature of the writ *de lunatico inquirendo* (which is analogous to that *de idiota inquirendo*), to enquire into the party's state of mind. The proceedings are regulated by 3 & 4 W. IV., c. 36, and 5 & 6 Vict., c. 84. If the party be found *non compos*, the care of his person, with a suitable allowance for his maintenance, is usually committed by the Lord Chancellor to some friend, then called his committee.

DEMAND, a claim, a challenging, the asking of anything with authority, a calling upon a person for anything due. It is either *in deed*, written or verbal, as a demand for rent, or an application for payment of a debt, or *in law*, as an entry on land, distraining for rent, bringing an action.

DEMANDANT. He who is actor or plaintiff in a real action, because he demands lands. *Co. Lit.* 127.

DEMEASE, death.

DE MEDIETATE LINGUÆ (of a moiety of tongues), jury. The 6 Geo. IV., c. 50, § 47, enacts that, on the prayer of any alien indicted for felony or misdemeanour, the sheriff or other proper minister shall, by command of the court, return for one-half of the jury a competent number of aliens, if so many there be in the town or place where the trial is had; and if not, then so many aliens as shall be found in the same town or place, if any; and that no such alien juror shall be liable to be challenged for want of reehold or other qualification required, but that every such alien may be challenged for any other cause. This kind of jury is not allowed in a civil action, nor in cases of treason.

Indictments against scholars or privileged persons, belonging to the University of Oxford, are tried by a *jure de medietate*, half of freeholders and half of matriculated persons, before the High Steward of the University, or his deputy, in pursuance of the charter 7th June, 2 Hen. IV., confirmed by the statute 13 Eliz., c. 29.

DEMEINE, DEMAIN, or DEMESNE [*demaine*, Fr.], that part of the lands of a manor, which the lord has not granted out in tenancy, but which is reserved for his own use and occupation.

De minimis non curat lex. Cro. Eliz. 353.—(The law cares not about very trifling matters.) *Vide* ACCRETION.

DEMISE, a grant by will; a bequest; an estate either in fee, for term of life or years, most commonly the latter; it is used in writs for any estate. 2 Inst. 483.

Also the death of the Sovereign, *demissio regis vel coronæ*, an expression which signifies merely a transfer of property; for when we say the demise of the Crown, we mean only that in consequence of the disunion of the Sovereign's natural body from his body politic, the kingdom is transferred or demised to his successor, and so the royal dignity remains perpetual. Plowd. 177.

DEMISE, and REDEMISE, mutual leases of the same land, or something out of it, and is proper upon the grant of a rent-charge, &c.

DEMI-VILL, a town consisting of five free-men, or frank-pledges. Spelman.

DEMOCRACY [*democracie*, Fr., *democrazia*, Ital., *democracia*, Sp., *democratia*, Lat., of *δημοκρατία*, of *δῆμος*, the people, and *κράτος*, Gk., to exercise power over], one of the three forms of government; that in which the sovereign power is neither lodged in one man, nor in the nobles, but in the collective body of the people.

De molendino de novo erecto non jacet prohibitio. Cro. Jac. 429.—(A prohibition lies not against a newly erected mill.)

De morte hominis nulla est cunctatio longa. Co. Lit. 134.—(Concerning the death of a man no delay is long.)

DEMURRAGE, in commercial navigation, an allowance made to the master or owners of a ship by the freighter, for detaining her in port longer than the period agreed upon for her sailing. It is usually stipulated in charter parties and bills of lading, that a certain number of days, called running or working days, shall be allowed for receiving or discharging the cargo, and that the freighter may detain the vessel for a further specified time, or as long as he pleases, on payment of so much *per diem* for such over-time. When the contract of affreightment expressly stipulated that so many days shall be allowed for discharging or receiving the cargo, and so many more for over-time, such limitation is interpreted as an express stipulation on the part of the freighter, that the vessel shall in no event be detained longer, and that if detained he will be liable for demurrage. This holds even

in cases where the delay is not occasioned by any fault on the freighter's part, but is inevitable. If, for example, a ship be detained, owing to the crowded state of the port, for a longer time than is allowed by the contract, demurrage is due; and it is no defence to an action for demurrage that it arose from port regulations, or even from the unlawful acts of the custom-house officers. Demurrage is not, however, claimable for a delay occasioned by the hostile detention of the ship, or the hostile occupation of the intended port; nor is it claimable for any delay wilfully occasioned by the master, or owners, or crew of the vessel. The claim for demurrage ceases as soon as the ship is cleared out and ready for sailing, though she should be detained by adverse winds or tempestuous weather. *Chit. Com. Law*, vol. iii., p. 426.

DEMURRER [*demorari*, Lat., or *demorrer*, Fr., to wait or stay], a pleading which admits the facts as stated in the pleading of the opponent, and referring the law arising thereon to the judgment of the court, waits until such judgment is had, whether he is bound to answer.

At *Common Law*, a demurrer might be for insufficiency, either in substance or in form; that is, it may be either on the ground that the case shown by the opposite party is essentially insufficient, or on the ground that it is stated in an inartificial manner, for the law requires in every plea (and the observation equally applies in all other pleadings) two things: the one, that it be in matter sufficient; the other, that it be deduced and expressed according to the forms of law; and if either the one or the other of these be wanting, it is cause of demurrer.

A demurrer is either to the whole or a part of the declaration, or to the whole of the plea, replication, &c., or to the whole or part of a divisible plea, or replication, &c. It is either general or special; the former being for some defect in substance, the latter for some defect in form. By rule H. T., 4 Wm. IV., r. 2, "in the margin of every demurrer, before it is signed by counsel, some matter of law intended to be argued shall be stated; and if any demurrer shall be delivered without such statement, or with a frivolous statement, it may be set aside as irregular by the court or a Judge, and leave may be given to sign judgment as for want of a plea. Provided that the party demurring may, at the time of the argument, insist upon any further matters of law, of which notice shall have been given to the court in the usual way." By r. 3, "no rule for joinder in demurrer shall be required, but the party demurring may demand a joinder in demurrer, and the opposite party shall be bound, within four days after such demand, to deliver the same, otherwise judgment." To a joinder in demurrer no signature of a serjeant or other counsel shall be necessary, nor any fee allowed in respect thereof.

The demurrer book, containing the issue in law, is made up and delivered to the opposite party, and four clear days before the day appointed for argument, the plaintiff shall deliver copies of the demurrer book to the Lord Chief Justice of the Queen's Bench, or Common Pleas, or Lord Chief Baron (as the case may be), and the senior Judge of the court in which the action is brought; and the defendant shall deliver copies to the other two Judges of the court next in seniority: the points for argument are to be stated in the margin. The other party may deliver all, if default be made by one. Where judgment shall be given either for or against a plaintiff or defendant, or for or against a plaintiff or tenant, upon any demurrer joined in any action whatever, the party in whose favour such judgment shall be given, shall also have judgment to recover his costs in that behalf. *Step. Plead.* 151; *Chit. Arch. Prac.* 658.

A demurrer, in equity, is in the nature of a declinatory exception in the civil law, which was always put in before the prætor, *ante litem contestatam*. It may be to the whole bill, or a part only of the bill.

Whenever any ground of defence is apparent on the bill itself, either from the matter contained in it, or from defect in its frame, or in the case made by it, the proper mode of defence is by demurrer. A demurrer is an allegation by a defendant, which, admitting the matters of fact alleged by the bill to be true, shows, that as they are therein set forth, they are insufficient for the plaintiff to proceed upon or to oblige the defendant to answer; or that for some reason apparent on the face of the bill, or because of the omission of some matter which ought to be contained therein, or for want of some circumstance which ought to be attendant thereon, the defendant ought not to be compelled to answer. It therefore demands the judgment of the Court whether the defendant shall be compelled to make answer to the plaintiff's bill, or to some certain part thereof.

It is either general or special; *general*, when no particular cause is assigned, except the usual formulary (to comply with the rules of the court), that there is no equity in the bill; *special*, when the particular defects or objections are pointed out. The former will be sufficient (though special causes are usually stated) when the bill is defective in substance. The latter is indispensable where the objection is to the defects of the bill in point of form. It must be signed by counsel, but it is not put in upon oath, as it asserts no fact, and relies merely upon matter on the face of the bill. Where a demurrer is put in to the whole bill for causes aforesaid on the record, if those causes are overruled the defendant will be allowed to assign other causes of demurrer *ore tenus* (by word of mouth), at the argument.

Demurrers to original bills, praying relief, may properly be divided into three classes:—

1. To the jurisdiction, subdivided into four heads:—

(a) That the subject is not cognizable by any municipal court of justice.

(β) That the subject is not within the jurisdiction of a court of equity.

(γ) That some other court of equity is invested with the proper jurisdiction.

(δ) That some other court possesses the proper jurisdiction.

2. To the person of the plaintiff, subdivided thus:—

(a) That the plaintiff is not entitled to sue, by reason of some personal disability.

(β) That the plaintiff has no title to the character in which he sues.

3. To the matter of the bill, either as to its substance, or as to its form and frame; *first*, demurrers to substance may be subdivided thus:—

(a) That the value of the subject of the suit is too trivial to justify the court in taking cognizance of it; or, as the phrase usually is, that the suit is unworthy of the dignity of the court. The rule is, not to entertain a bill under the value of 10*l.*, or 40*s.* per annum in land, except in special cases, such as charity, fraud, &c.

(β) That the plaintiff has no interest in the matter, or no proper title to institute a suit concerning it.

(γ) Where a bill does not show any equity in the plaintiff to the relief which he seeks.

(δ) Though the plaintiff has an interest in the matter and a title to institute a suit concerning it, yet he has no right to call upon the defendant to answer his demand.

(e) Want of interest of the defendant in the matter of the suit.

(f) That the object of the bill is to enforce a penalty or forfeiture.

Second, demurrers to the frame and form of the bill, subdivided into:—

(a) Defect of form.

(β) Multifariousness.

(γ) Want of proper parties, or misjoinder of parties.

Demurrers to bills of discovery may be thus classed:—1. That the case made by the bill is not such in which a court of equity assumes a jurisdiction. 2. That it is brought in aid of an action in another court, which action cannot be sustained. 3. That the bill is brought by or against persons who are not parties to the action at law. 4. That the defendant has no interest in the matter of the controversy, and is a mere witness. 5. That there is no privity of title between them, entitling the plaintiff to discovery against the defendant. 6. That the matter sought to be discovered appertains to the defendant's title, and not to that of the plaintiff. 7. That it may expose the defendant to a penalty or a forfeiture, or that it may compel him to criminate himself. 8.

That it seeks the discovery of a fact from one, whose knowledge of the fact (as appears on the face of the bill) was derived from the confidence reposed in him as counsel, attorney, solicitor, or arbitrator. 9. That the defendant has an equal equity with the plaintiff, and is therefore entitled to be protected from a discovery, which will endanger or disturb or destroy his present rights. It may be remarked that many objections, already stated to bills for relief, are equally applicable to bills of discovery.

Demurrers to bills not original may be thus stated: 1. To supplemental bills, and to bills in the nature of supplemental bills—that the plaintiff has no right to file such bill either from want of title or from mistake in pleading, or that the bill is not properly supplemental. 2. To bills of revivor, and to bills in the nature of bills of revivor; that there is neither privity, nor interest, nor a proper framing of the bill. 3. To bills in the nature of bills of revivor and supplement, these are liable to the same objections as original bills. 4. To cross bills, same as original bills, but the converse of this proposition is not universally true. A demurrer for want of equity will not hold to a cross bill filed by a defendant in a suit, against the plaintiff in the same suit, touching the same matter. For, being drawn into the court by the plaintiff in the original bill, he may avail himself of the assistance of the court without being put to shew a ground of equity to support its jurisdiction; as a cross bill is generally considered as a matter of defence. 5. To bills of review, and to bills in the nature of bills of review, that there is a defect in the framing. 6. To bills to impeach decrees for fraud, that there is no fraud. 7. To bills to suspend or to avoid the operation of decrees, rarely, if ever, resorted to. 8. To bills to carry decrees into execution, that the plaintiff has no right, or that the decree is erroneous. *Story's Eq. Plead.* 348—470.

A defendant has only twelve days after appearance to demur alone to any bill, but if he wish to avoid the common injunction for default of answer, or to shew cause against an order to revive, he must demur within eight days. To any original or supplemental bill he has six weeks after appearance to demur, not demurring alone; to an amended bill, the order for which is served before answer, he has six weeks after such service; if amended after answer, four weeks after appearance thereto. The plaintiff must set demurrer down for argument within twelve days after filing, if it be to the whole bill, and three weeks, if to part of the bill, otherwise, he is held to have submitted thereto, unless in the mean time he serve an order for leave to amend bill, but the vacations are not to be reckoned in this case. *Orders, 8th May, 1845.*

As to *evidence*, if a witness, in equity, object to answer an interrogatory, or any part of it, he must state his objection in the form of a demurrer, which is taken down in

writing, either by the examiner or by the commissioner, from the mouth of the witness, and after giving notices and copies thereof, the matter is argued by counsel in court. At *common law*, when it is thought by counsel that the facts proved do not maintain the issue, the question whether they do or do not being merely a question of law, a demurrer may be offered, which takes from the jury and refers to the court, the application of the law to the fact, but this practice has been almost entirely suspended by simply moving the court for a new trial, besides if there were any evidence to go to the jury, the demurring party would fail; a risk too serious to be hazarded. *Chit. Arch. Prac.* 310.

In *criminal* prosecutions, a demurrer may be resorted to, when the fact as alleged is allowed to be true, but the defendant takes exception in point of law to the sufficiency of the indictment or information on the face of it, as if he insist that the fact as stated is no felony, treason, or whatever the crime is alleged to be. It is seldom resorted to. 7 *Geo. IV.*, c. 64, §§ 20, 21. 4 *Bl. Com.* 333.

DEMY-SANGUE, half-blood.

DEN, a valley. *Blount.*

DEN, and STROND, a liberty for ships or vessels to run or come ashore. *Pla. tem. Ed. I.*

DENA TERRÆ, a hollow place between two hills; a little portion of woody ground; a coppice.

DENARIATE, as much land as is worth one penny *per annum*.

DENARII, a sort of ready money.

DENARII DE CARITATE, customary oblations made to cathedral church at Pentecost.

DENARIUS, the chief silver coin among the Romans, worth 8d., it was the seventh part of a Roman ounce; also an English penny. The denarius was first coined five years before the first Punic war, B. C., 269. In later times a copper coin was called denarius. *Smith's Dict. Antiq.*

DENARIUS DEI, God's penny, or earnest given and received by parties to contracts, &c., paid in former times to the church or poor.

DENARII S. PETRI, an annual payment on St. Peter's feast of one penny from every family to the Pope, during the time that the Roman Catholic religion prevailed in this kingdom.

DENARIUS TERTIUS COMITATUS, a third part or penny of the county paid to its earl, the other two parts being reserved to the Crown. *Paroch. Antiq.* 418.

DENBERA [*den*, Sax., a vale, and *berg*, a barrow or hog], a pen for hogs; a swine-court. *Cowel.*

DENELAGE [*Dane*], the laws which the Danes enacted whilst they had the dominion in England.

DENIAL. See TRAVERSE.

DENIZATION, the act of enfranchising, or making free.

DENIZEN, an alien born, but who has ob-

tained, *ex donatione regine*, letters patent to make him (either permanently or for a time) an English subject: a high and incommunicable branch of the royal prerogative. He is in a kind of middle state, between an alien and natural-born subject, and partakes of both of them. He may hold lands by purchase or devise, which an alien may not, but cannot take by inheritance: for his parent, through whom he must claim, being an alien, had no heritable blood; and therefore could convey none to his son. And upon a like defect of inheritable blood, the issue of a denizen, born before denization, cannot inherit to him, but his issue born after may. And no denizen can be of the Privy Council, or either House of Parliament, or have any office of trust, civil or military, or be capable of any grant of lands, &c., from the Crown. *2 Step. Com. 431.*

Denominatio fieri debet a dignioribus.—(Denomination should be made for the more worthy.)

De nomine proprio non est curandum cum in substantiâ non erretur; quia nomina mutabilia sunt, res autem immobiles. 6 Co. 66.—(As to the proper name it is not to be cured, where it errs not in substance; because names are changeable, but things immutable.)

De non apparentibus, et non existentibus, eadem est ratio. 5 Rep. 6.—(As to things not apparent and those not existing, the rule is the same.)

DENSHIRING OF LAND, (otherwise called *burn-beating*,) a method of improving land by casting parings of earth, turf, and stubble, into heaps, which, when dried, are burnt into ashes, for a compost.

DE NON RESIDENTIA CLERICI REGIS, an ancient writ where a person was employed in the royal service, &c., to excuse and discharge him of non-residence. *2 Inst. 264.*

DE NOVO (afresh; anew).

DE NOVO DAMUS, a clause in a charter, rendering it, in effect, an original.

De nullo, quod est sui naturâ indivisibile, et divisionem non patitur, nullam partem habebit vidua, sed satisfaciât ei ad valentiam. Co. Lit. 32.—(A widow shall have no part from that which in its own nature is indivisible, and is not susceptible of division; but let her satisfy herself with an equivalent.)

DENUMERATION, the act of present payment. *Scott.*

DEODAND [*deo dandum*, Lat.], a personal chattel which has been the immediate occasion of the death of any reasonable creature, forfeited to the Crown, to be applied to pious uses, and distributed in alms by the high almoner; but the right to deodands has been for the most part granted out to the lords of manors, or other liberties, to the perversion of their original design. The law has made the following extraordinary distinction, that no deodand is due where an infant under the age of discretion is killed by a fall from a cart, or horse, or the like, not being in

motion, whereas if an adult person fall from thence, and is killed, the thing is certainly forfeited. In all indictments for homicide, the instrument of death and the value are presented and found by the grand jury (as that the blow was given by a certain bludgeon, value 9d.), that the Crown or the grantee may claim the deodand; for it is no deodand unless it be presented as such by a jury of twelve men. 3 & 4 Wm. IV., c. 99; 1 Bl. Com. 300.

DE ONERANDO PRO RATA PORTIONIS, an ancient writ, where a person was distrained for rent, that ought to be paid by others proportionably with him. *F. N. B. 234; New Nat. Br. 586.*

DE ODIO ET ATRIA, an obsolete writ, which commanded the sheriff to enquire whether a prisoner charged with murder was committed on general cause of suspicion, or merely *propter odium et atriam*, for hatred and ill will, with a view, if the latter were found the case, of afterwards issuing another writ to admit him to bail.

DEOR HEGE, the hedge enclosing a deer park.

DEPARTURE [*decessus*], in pleading, when a party deserts the ground that he took in his last antecedent pleading, and resorts to another. It can never take place till the replication, and it occurs more frequently in the rejoinder.

The rule against departure is evidently necessary to prevent the retardation of the issue. For whilst the parties are respectively confined to the grounds they have first taken in their declaration or plea, the process of pleading will exhaust, after a few alternations of statement, the whole facts involved in the cause, and thereby develope the question in dispute. But if a new ground be taken in any part of the series, a new state of facts being introduced, the result is consequently postponed. Besides, if one departure were allowed, the parties might, on the same principle, shift their ground as often as they pleased; and an almost indefinite length of altercation might, in some cases, be the consequence. *Step. Plead. 451.*

DEPECULATION, a robbing of the prince or commonwealth; an embezzling of the public treasure.

DEPONENT [*depono*, Lat., to lay down], a person who makes an affidavit; a witness; one who gives his testimony in a court of justice.

DEPOPULATIO AGRORUM, destroying and ravaging a country.

DEPORTATION, transportation, exile into a remote part of the kingdom, with prohibition to change the place of residence; exile, an abjuration, which is a deportation for ever into a foreign land, was anciently with us a civil death. *Ayliffe.*

DEPOSE, to lay down; to lodge; to degrade from a throne or high station.

DEPOSIT, money lodged with a person as an earnest or security for the performance of some contract. Also a naked bailment of

goods to be kept for the bailor without recompence, and to be returned when the bailor shall require it. The appellation and the definition are both derived from the civil law, *Depositum est, quod custodiendum alicui datum est*. They are, in the civil law, divisible into two kinds: *necessary*, made upon some sudden emergency, and from some pressing necessity; as, for instance, in case of a fire, a shipwreck, or other overwhelming calamity; and it is, therefore, confided to any person with whom the depositor meets, without any proper opportunity for reflection or choice; and thence it is called *miserabile depositum*; and, *voluntary*, which arises from the mere consent and agreement of the parties. The common law has made no such division. There is another class of deposits, called *involuntary*, which may be without the assent or even knowledge of the depositor; as lumber, &c., left upon another's land by the subsistence of a flood or unusual tide, and goods lodged in a similar manner by a whirlwind.

The civilians again divide deposits into *simple deposits*, made by one or more persons having a common interest, and *sequestrations*, made by one or more persons, each of whom has a different and adverse interest in controversy touching it; and these last are of two sorts, *conventional*, or such as are made by the mere agreement of the parties, without any judicial act; and *judicial*, or such as are made by order of a court in the course of some proceeding.

There is another class of deposits called *irregular*, as when a party, having a sum of money which he does not think safe in his own hands, confides it to another, who is to return to him, not the same money, but a like sum, when he shall demand it. There is also a *quasi deposit*, as where a person comes lawfully to the possession of another person's property, by finding it; and a *special deposit* of money or bills in a bank, where the specific money, the very silver or gold coin, or bills deposited, are to be restored, and not an equivalent. *Story on Bailments*, tit. *On Deposits*, chap. ii.

A deposit of title deeds as a security for the repayment of a borrowed sum of money, constitutes an equitable mortgage. See **EQUITABLE MORTGAGE**.

DEPOSITARY, one with whom anything is lodged in trust, as depository is the place where it is put. The obligation on the part of the depositary is, that he keep the thing with reasonable care, and, upon request, restore it to the depositor, or otherwise deliver it, according to the original trust.

DEPOSITION, death; depriving a person of a dignity, &c.; also the act of giving public testimony; evidence put down in writing by way of answer to interrogatories, exhibited for that purpose in Chancery suits and ecclesiastical causes. This is the regular mode of taking evidence in the courts of Chancery and the ecclesiastical courts.

It is an incontrovertible rule at common

law, that when the witness himself may be produced, his deposition cannot be read, for it is not the best evidence. But it may be read not only where it appears that the witness is actually dead, but in all cases where he is dead for all purposes of evidence; as where diligent search has been made for the witness and he cannot be found; where he resides in a place beyond the jurisdiction of the court; or where he has become lunatic or attainted. See *DE BENE ESSE*; *PERPETUATE TESTIMONY*, *BILLS TO*. As to depositions in criminal proceedings, see 7 Geo. IV., c. 65.

DEPRIVATION, taking away from a clergyman his patronage, vicarage, or other spiritual promotion or dignity, either, first, by sentence declaratory in the proper court for fit and sufficient causes; such as attainder for treason or felony, or conviction of other infamous crime; for heresy, infidelity, gross immorality, and the like; or for farming or trading contrary to law, after two former convictions for the same offence; or, secondly, in pursuance of divers penal statutes, which declare the benefice void, for some non-feasance or neglect, or else some malfeasance or crime, as for simony; for maintaining any doctrines in derogation of the sovereign's supremacy, or of the thirty-nine articles, or of the book of common prayer; for neglecting to read the liturgy and articles in the church, and declare assent to the same within two months after induction; or for using any other form of prayer than the liturgy of the Church of England, in all which and similar cases the benefice is *ipso facto* void, without any formal sentence of deprivation. 3 *Step. Com.* 87.

DE PRÆROGATIVA REGIS, the statute 17 Edward II., st. 1, which enacts, in affirmance of the common law, that the king shall have ward of the lands of natural fools, taking the profits, without waste or destruction, and shall find them necessities; and after the death of such idiots, he shall render the estate to the heirs, in order to prevent such idiots from aliening their lands, and their heirs from being disinherited.

DEPUTY [*deputé*, Fr., from *deputatus*, Lat.], one who governs and acts instead of another, or who exercises an office, &c., in another man's right. A deputy cannot be appointed in all cases, except the grant of the office justifies it, and where it is to one to execute by deputy, &c. By 3 & 4 Wm. IV., c. 42, every sheriff is directed to appoint a sufficient deputy, having an office within a mile of the Inner Temple Hall, for the receipt of writs, granting warrants thereon, making returns thereto, and accepting all rules and orders made as to the execution of any process or writ directed to the sheriff.

A deputy differs from an assignee, in that an assignee has an interest in the office itself, and does all things in his own name, for whom his grantor shall not answer, except in special cases; but a deputy has not any interest in the office, and is only the shadow

of the officer in whose name he acts. A deputy cannot make a deputy. 9 Rep. 49.

DE QUIBUS SUR DISSEISIN, a writ of entry now abolished.

DER [*dar*, Brit.], water.

DERAIGN, or **DEREYN** [*deraigner*, or *deragner*, Fr.], to confound, to displace, also to prove. *Glanv.* l. 2, c. 3.

DE RATIONABILI BONORUM PARTE, a writ, anciently given to the wife and children of a man, to recover their reasonable parts of his goods, which he could not bequeath away from them; a custom now utterly abolished, for a man has a full power of disposition over his goods and chattels.

DERELICT LANDS, those suddenly left by the sea, as when the sea shrinks back below the usual water-mark. Vessels forsaken at sea are called *derelict ships*.

Derivativa potestas non potest esse major primitiva. Noy; Wing. 66.—(The derivative power cannot be greater than the primitive.)

DERIVATIVE CONVEYANCES, secondary deeds, which presuppose some other conveyance primary or precedent, and only serve to enlarge, confirm, alter, restrain, restore, or transfer the interest granted by such original conveyance. They are releases, confirmations, surrenders, assignments, and defeasances.

DEROGATION, the act of weakening or restraining a former law or contract.

DEROGATORY-CLAUSE in a person's will, a sentence or secret character inserted by the testator, of which he reserves the knowledge to himself, with a condition that no will he may make thereafter should be valid, unless this clause be inserted word for word. This is done as a precaution to guard against later wills being extorted by violence, or otherwise improperly obtained.

DESCENDER, writ of *formedon in*, an abolished process. F. N. B. 21.

DESCENT, one of the two methods of acquiring an estate in lands. It is the hereditary succession of property vested in a person by the operation of law, i. e., by his right of representation, as heir at law to his ancestor. It is defined, in the interpretation clause of the 3 & 4 Wm. IV., c. 106, as "the title to inherit lands by reason of consanguinity, as well where the heir shall be an ancestor or collateral relation as where he shall be a child or other issue." See **CANONS OF INHERITANCE**.

DESCENT CAST, not to take away or defeat a right of entry or action after 31st December, 1833. 3 & 4 Wm. IV., c. 27.

Designatio justiciariorum est à rege; jurisdictio vero ordinaria à lege. 4 Inst. 74.—(The appointment of justices is by the king, but ordinary jurisdiction by the law.)

Designatio unius est exclusio alterius, et expressum facit cessare tacitum. Co. Lit. 210.—(The appointment of one is the exclusion of another, and that expressed makes that understood to cease.)

DESIGNS, *copyright in*. These productions of genius, whether ornamental or useful, are now protected by 5 & 6 Vict., c. 100.

De similibus ad similia eodem ratione procedendum est.—(From similars to similars we are to proceed by the same rule.)

De similibus idem est judicium. 7 Co. 18.—(Concerning similars the judgment is the same.)

DE SON TORT (of his wrong), *executor*. If a stranger take upon himself to act as executor, without any just authority (as by intermeddling with the goods of the deceased, and many other transactions), he is called in law an executor of his own wrong, *de son tort*, and is liable to all the trouble of an executorship, without any of the profits or advantages; but merely doing acts of necessity or humanity, as locking up the goods or burying the corpse of the deceased, will not amount to such an intermeddling as will charge a man as executor of his own wrong. Such an one cannot bring an action himself in right of the deceased; but actions may be brought against him. And in all actions by creditors against such an officious intruder he shall be named as executor generally; for the most obvious conclusion which strangers can form of his conduct is, that he has a will of the deceased wherein he is named executor, but has not yet taken probate thereof. He is chargeable with the debts of the deceased so far as assets come to his hands; and, as against creditors in general, shall be allowed all payments made to any other creditor in the same or a superior degree, himself only excepted. And though as against the rightful executor or administrator he cannot plead such payment, yet it shall be allowed him in mitigation of damages; unless, perhaps, upon a deficiency of assets, whereby the rightful executor may be prevented from satisfying his own debt. 2 Step. Com. 244.

DESPITUS, a contemptible person.

DESPONSATION, the act of betrothing persons to each other.

DESPOT [*δεσπότης*, Gk., a governor, a ruler], an absolute prince; one who governs with unlimited authority. The word in its origin signified the same with the Latin *hærus*, and the English *master*. It was the emperor Alexius, surnamed the Angel, that created the dignity of *despot*, and made it the first after that of emperor, above that of Augustus, Sebastocrator, or Cæsar. The despots were usually the emperor's sons or sons-in-law, and their colleagues or co-partners in the empire, as well as their presumptive heirs. Under the successors of Constantine the Great the title of *Despot of Sparta* was given to the emperors' son or brother, who had the city of Sparta, or Lacedæmon, by way of appennage. Despot is at present a title of quality given to the princes of Wallachia, Servia, and some of the neighbouring countries. *Encyc. Lond.*

DESPOTISM, absolute power.

DESUBITO, to weary a person with continual barkings, and then to bite, provided against by old laws. *Leg. Alured*, 26.

DETACHIARE, to seize or take into custody

another person's goods, &c., by attachment or other process of law. *Cowel.*

DETAINDER, *forcible*. See FORCIBLE ENTRY.

DETAINDER, *unlawful*, depriving another person of possession of his goods, although the original taking was lawful. As if I distrain another's cattle, *damage feasant*, and before they are impounded he tenders me sufficient amends; now, though the original taking was lawful, my subsequent detainment of them after tender of amends, is not lawful, and he shall have an action of replevin against me to recover them, in which he shall recover damages for the *detention*, and not for the *caption*, because the original taking was lawful. 3 *Step. Com.* 524.

DETAINDER, *writ of*, one of the five forms of process prescribed by the 2 Wm. IV., c. 39, § 1, for the commencement of a personal action against a person already in the prison of one of the courts. Superseded by 1 & 2 Vict., c. 110, §§ 1 & 2.

A process lodged with the sheriff against a person in his custody is called a detainer; the officer, therefore, always searches the sheriff's office to see if there be any detainers lodged there against a person in his custody, before he discharges him. *Chit. Arch. Prac.* 534.

DETERMINABLE FREEHOLDS, estates for life, which may determine upon future contingencies before the life for which they are created expires. As if an estate be granted to a woman during her widowhood, or to a man until he be promoted to a benefice; in these and similar cases, whenever the contingency happens, when the widow marries, or when the grantee obtains a benefice, the respective estates are absolutely determined and gone. Yet, while they subsist, they are reckoned estates for life; because the time for which they will endure being uncertain, they may by possibility last for life, if the contingencies upon which they are to determine, do not sooner happen. 2 *Bl. Com.* 121.

DEFINET [he detains], a species of debt, which lies for the specific recovery of goods, under a contract to deliver them. 1 *Reeves*, 159.

DETINUE, a personal action at law arising *ex delicto*. It may be maintained by any person who has either an absolute or a special property in goods against another, who is in actual possession, either by delivery or finding, &c., of such goods, and refuses to re-deliver them. The plaintiff seeks to recover the goods *in specie*, or in failure thereof the value (for it is in the election of the defendant whether he will deliver the specific goods, or pay the value thereof), and also damages for the detention.

The grounds of the actions are (1), a property in the plaintiff, either absolute or special (at the time of action brought) in personal goods, which are capable of being ascertained; (2), a possession in the defendant by bailment, finding, &c.; (3), an unjust detention on the part of the defendant. *Selv. Nis. Prius*, tit. *Detinue*.

DETRATARI, to be torn in pieces by horses. *Fleta*, l. 1, c. 37.

DETUNICARE, to discover or lay open to the world. *Matt. Westm.* 1240.

Deus solus hæredem facere potest non homo. Co. Lit. 7.—(God alone, and not man, can make an heir.)

DEVADIATUS, or DIVADIATUS, an offender without sureties or pledges.

DEVASTAVIT (he has wasted), a devastation or waste of the property of a deceased person, by an executor or administrator being extravagant or misapplying the assets, for which he will be liable, as the creditors or legatees cannot be prejudiced by his misconduct.

DEVENERUNT, an obsolete writ, heretofore directed to the escheator on the death of the heir of the king's tenant, under age and in custody, commanding the escheator that, by the oaths of good and lawful men, he enquire what lands and tenements, by the death of the tenant, came to the king. *Dyer*, 860.

DE VENTRE INSPICIENDO, *writ*, an original process issuing out of Chancery on petition, for the security of the next heir (*i. e.*, *verus hæres*, not *hæres apparens*), or on behalf of a tenant in tail, or *hæres factus* as a devisee in fee, in tail, or for life, to guard them against supposititious births.

The first writ issued on these occasions is to see whether the widow be with child, and *quando paritura*; and if the jury (which is composed of men and women, though the search is made by the latter) find her with child, then she is (in strictness) to be removed by a second writ, issuing out of the Common Pleas (where the first is returnable), to a castle (so are the old authorities) where the sheriff is to keep her safely; but it has been held that there is no occasion to execute the writ in that strict manner, provided people of skill have, from time to time, free access to the widow, and may be present at the birth. *Mad. Chan. v. i. p.* 11.

DEVEST, or DIVEST [*de* and *vestis*, Lat.], to deprive, to take away; opposite to *invest*, which is to deliver possession of anything to another.

DEVIL ON THE NECK, a tormenting engine made of iron, straitening and winching the neck of a man with his legs together; formerly in use among the persecuting papists. *Cowel.*

DEVISABLE, capable of being devised.

DEVISE [*deviser*, Fr., to sort into parcels], a gift of lands, &c., by a last will and testament. The giver is called the *devisor*, the person to whom the lands are given, the *devisee*.

DEVOIRE [Law Fr.], a duty; a tax of custom.

DEVONSHIRING. See DENSHIRING.

DEUTEROGAMY, [*deuteros*, Gk., second, and *γᾱμος*, marriage], a second marriage.

DEXTRARIUS, one at the right hand of another.

DEXTRAS DARE, shaking hands in token of friendship; or a man's giving up himself to the power of another person. *Wals.* 332.

DIACONATE, the office of deacon.

DIALLAGA, a rhetorical figure in which many arguments are adduced, but none of them conclusive. *Encyc. Lond.*

DIANATIC, a logical reasoning in a progressive manner, proceeding from one subject to another. *Ibid.*

DIARIUM, daily food, or as much as will suffice for the day. *Du Cange.*

DIASPERATUS, stained with many colours. *Mon. Ang. t. 3, p. 314.*

DICA [δέκα, Gk., ten], a tally for accounts.

DICTORES, arbitrators.

DICTUM, an arbitrament; an award.

DIEM CLAUSIT EXTREMUM, a writ which issued out of Chancery to the escheator of the county, upon the death of any of the king's tenants *in capite*, to enquire by a jury of what lands he died seised, and of what value, and who was the next heir to him. *F. N. B. 251.*

DIES AMORIS (the day of love), the appearance day of the Terin on the fourth day, or *quarto die post*. It was the day given by the favour and indulgence of the court to the defendant for his appearance, when all parties appeared in court, and had their appearance recorded by the proper officer.

DIES DATUS, the day of respite given to a defendant.

Dies dominicus non est juridicus. Co. Lit. 35. —(A dominical day, i. e., a Sunday, is not juridical.)

DIES FASTI ET NEFASTI (business and non-business days).

For the purpose of the administration of justice all days were divided by the Romans into *fasti* and *nefasti*. *Dies fasti*, were the days on which the prætor was allowed to administer justice in the public courts; they derived their name from *fari* (*fari tria verba; do, dico, addico*, Ovid, *Fast* i. 45, &c.); Varro, *De Ling. Lat.* vi. 29, 30 edit. Müller; Macrob. *Sat.* i. 16. On some of the *dies fasti* comitia could be held, but not on all. Cic., *pro Sext.* 15, with the note of Manutius.

Dies nefasti were days on which neither courts of justice nor comitia were allowed to be held, and which were dedicated to other purposes. Virro, *l. c.* According to the ancient legends, they were said to have been fixed by Numa Pompilius, Liv. i. 19. One part of a day might be *fastus*, while another was *nefastus*. Ovid, *Fast* i. 50.

Dies inceptus pro completo habetur.—(The day of undertaking is held as complete.)

Dies incertus pro conditione habetur.—(An uncertain day is held as a condition.)

Dies interpellat pro homine.—(A day demands as a man.)

DIES JURIDICUS, a court day.

DIES MARCHIÆ, the day of meeting of English and Scotch, which was annually held on the marches or borders to adjust their differences and preserve peace.

DIES NON JURIDICUS, not a court day.

DIET [*dies*, an appointed day, *Skinner*; or *diet*, an old German word, meaning a multitude,

Junius], an assembly of princes or estates, principally applied to the general meetings of the states of Germany.

DIETA, a day's journey; a day's work.

DIEU ET MON DROIT (God and my right). The motto of the royal arms, first assumed by Richard I.

DIEU ET SON ACTE (the visitation of God), words often used in our own law. It is a maxim that the act of God, or inevitable accident, shall prejudice no man, *actus Dei nemini facit injuriam*.

DIFFACERE, to destroy.

Difficile est ut unus homo vicem duorum sustineat.

4 Co. 118.—(It is difficult that one man should sustain the place of two.)

DIFFORCIARE RECTUM (to take away or deny justice).

DIFFRANCHISEMENT, the act of taking away the privileges of a city, or a borough town.

DIGAMA [δύγαμα, Gr.], second marriage; marriage to a second wife after the death of the first: as *bigamy* is having two wives at once.

DIGEST, generally a distribution into various classes or departments; particularly, the Pandects of Justinian in fifty books, containing the opinions and writings of eminent lawyers, digested in a systematical method.

DIGNITARY [*dignus*, Lat., worthy], a clergyman advanced to a bishop, dean, archdeacon, prebendary, &c. But there are simple prebendaries without cure or jurisdiction, which are not dignitaries. 3 *Inst.* 155.

DIGNITIES, a species of incorporeal hereditament, in which a man may have a property or estate. They were originally annexed to the possession of certain estates in land, and created by a grant of those estates; or, at all events, that was the most usual course. And although they are become little more than personal distinctions, they are still classed under the head of real property; and, as having relation to land, in theory, at least, may be entailed by the Crown, within the Statute *de Donis*; or limited in remainder, to commence after the determination of a preceding estate-tail in the same dignity. See **PEOPLE**.

DIJUDICATION, judicial distinction.

DILAPIDATION, decay; a kind of ecclesiastical waste, either voluntary, by pulling down, or permissive, by suffering the chancel, parsonage-house, and other buildings thereunto belonging, to decay; an action lies, either in the spiritual court by the canon law, or in the courts of common law, and it may be brought by the successor against the predecessor if living, or if dead, then against his executors; and against an alienee, if it were made over to him to defeat the remedy for dilapidations. 13 Eliz. c. 10.

Dilationes in lege sunt odiosæ.—(Delays in law are hateful.)

DILIGENCE. The common law recognizes three degrees of diligence. (1.) Common or ordinary, which men, in general, exert in respect of their own concerns; the standard

is necessarily variable with respect to the facts, although it may be uniform with respect to the principle. (2) High or great, which is extraordinary diligence, or that which very prudent persons take of their own concerns. (3.) Low or slight, which is that which persons, of less than common prudence, or indeed of any prudence at all, take of their own concerns.

The civil law is in perfect conformity with the common law. It lays down three degrees of diligence, ordinary (*diligentia*), extraordinary (*exactissima diligentia*), slight (*levissima diligentia*). *Story on Bailments*, 14.

DILIGIATUS [*de lege ejectus*], outlawed.

DILITORY PLEAS, a class of defence at common law, founded on some matter of fact not connected with the merits of the case, but such as may exist without impeaching the right of action itself, and are either pleas to the *jurisdiction*, showing that by reason of some matter therein stated the case is not within the jurisdiction of the court; or pleas in *suspension*, showing some matter of temporary incapacity to proceed with the suit; or pleas in *abatement*, showing some matter for abatement or quashing the declaration. These pleas must be verified by affidavit or otherwise, and pleaded within four days from delivery of declaration. 4 Ann., c. 16. They are in general not allowable after oyer or after a plea in bar. All dilatory pleas, including those in suspension, as well as pleas to the jurisdiction, are sometimes inaccurately classed as pleas in abatement. *Step. Plead.* 50.

All declinatory and dilatory pleas in equity are properly pleas, if not in abatement, at least in the nature of pleas in abatement; and, therefore, in general, the objections founded thereon must be taken, *ante litem contestatam*, by plea, and are not available by way of answer or at the hearing. And it has been said, that pleas of these kinds, may be successively pleaded, one after another, in their proper order; that is to say, first, declinatory pleas; secondly, dilatory pleas; and, thirdly, pleas in bar. For it has been said, that though no man shall be permitted to plead two dilatories at separate times, nor several bars, because he may plead them all at once, yet, after a plea to the jurisdiction, he may be admitted to plead in bar, because it is consistent with those pleas to plead in bar at the same time. *Story's Eq. Plead.* 549.

In criminal cases, a plea in abatement or dilatory plea, is founded on some matter of fact extraneous to the indictment, tending to show that it is defective in point of form; and has principally occurred in the case of a *misnomer*, i. e., a wrong name or a false addition to the defendant. But see 7 Geo. IV., c. 64, § 19.

DILLIGROUT, pottage formerly made for the King's table on his coronation day: and there was a tenure in serjeanty, by which lands were held of the King by the service of

finding this pottage at that solemnity. 39 Hen. III.

DIMETÆ, the ancient Latin name of the people who inhabited Carmarthenshire, Pembrokehire, and Cardiganshire.

DIMIDIETAS, the moiety or half of a thing.

DIMINUTION, the act of making less, opposed to *augmentation*. In proceedings for reversal of judgment, if the whole record be not certified, or not truly certified by the inferior court, the party injured thereby, in both civil and criminal cases, may allege a diminution of the record, and cause it to be rectified.

DIMISSORY LETTERS, where a candidate for holy orders has a title in one diocese and is to be ordained in another, the proper diocesan sends his letters dismissory directed to some other ordaining bishop, giving leave that the bearer may be ordained, and have such a cure within his district. *Cowel*.

DINARCHY [δύς, Gk., and ἀρχή, dominion], a government by two persons.

DIOCESAN, a bishop, as he stands related to his own clergy or flock.

DIOCESAN COURTS, the consistorial courts of each diocese, exercising general jurisdiction of all matters arising locally within their respective limits, with the exception of places subject to *peculiar* jurisdiction: deciding all matters of spiritual discipline—suspending or depriving clergymen—declaring marriages void—pronouncing sentence of divorces *à mensâ et thoro*—trying the right of succession to personal property—and administering the other branches of the ecclesiastical law. 3 *Step. Com.* 66.

DIOCESE, or **DIOCESS** [*diocese*, Fr., *diocesi*, Ital. and Span., *διοίκησις*, of *διὰ* and *οἰκέω*, to govern, Gk., *diæcesis*, Lat.], the circuit of every bishop's jurisdiction; it is divided into archdeaconries, each archdeaconry into rural deaneries, and rural deaneries into parishes. *Co. Lit.* 94.

DIPLOMA [διπλόω, Gk., to fold double, consisting of two leaves], a royal charter or prince's letters-patent. An instrument given by colleges and societies, on commencement of any degrees. A license for a clergyman to exercise the ministerial function, or a physician, &c., to practise his art.

DIPLOMACY, a knowledge of the interests of different states, and the policy of foreign courts, &c., by means of ambassadors, envoys, consuls, &c.

DIPLOMATICS (should not be confounded with *diplomacy*), the art of judging of ancient charters, public documents or diplomas, &c., and discriminating the true from the false.

It will not be out of place to subjoin here some rules that may serve as guides in the proper selection of historical documents. 1. The authority of any chartulary or public act is preferable to that of a private writer, even though he were contemporary. These public registers it is always necessary to consult, if possible, before having recourse to the authority of private letters; and a

history that is not supported by such public vouchers must in consequence be very imperfect. 2. When public acts are found to accord with the testimony of contemporary authors, there results a complete and decisive proof, the most satisfactory that can be desired, for establishing the truth of historical facts. 3. The testimony of a contemporary author ought generally to be preferred to that of an historian, who has written long after the period in which the events have happened. 4. Whenever contemporary writers are defective, great caution must be used with regard to the statements of more modern historians, whose narratives are often very inaccurate, or altogether fabulous. 5. The unanimous silence of contemporary authors on any memorable event is of itself a strong presumption for suspecting, or even for entirely rejecting, the testimony of very recent writers. 6. Historians who relate events that have happened anterior to the times in which they lived, do not, properly speaking, deserve credit, except in so far as they make us acquainted with the sources whence they have drawn their information. 7. In order to judge of the respective merits of historians, and the preference we ought to give some beyond others, it is necessary to examine the spirit and character of each, as well as the circumstances in which they are placed at the time of writing. *Encyc. Lond.*; *Kock's Europe, Introd.*

DIRECT, an epithet for the line of ascendants and descendants in genealogical succession.

DIRECTOR, a superintendent; one who has the general management of a scheme, design, or speculation.

DISABILITY, incapacity to do any legal act. It is divided into two classes:—(1) *absolute*, which, while it continues, wholly disables the person; such are outlawry, excommunication, attainder, and alienage; (2) *partial*, as infancy, coverture, idiotcy, lunacy, and drunkenness.

DISABLING STATUTES, acts of Parliament restraining and regulating the power of alienation between ecclesiastical persons in possession and their successors. They are 1 *Eliz.*, c. 20; 13 *Eliz.*, c. 10; 14 *Eliz.*, c. 11; 18 *Eliz.*, c. 11; 43 *Eliz.*, c. 9; 17 *Geo. III.*, c. 53; 21 *Geo. III.*, c. 66; 39 & 40 *Geo. III.*, c. 41; 43 *Geo. III.*, c. 84; 55 *Geo. III.*, c. 147; 56 *Geo. III.*, c. 141; 57 *Geo. III.*, c. 99.

DISADVOCARE, to deny a thing.

DISAFFOREST, to throw open; to reduce from the privileges of a forest to the state of common ground.

DISAGREEMENT, a nullity of a thing that had essence before. *Co. Lit.* 380.

DISALT, to disable a person. *Litt.*

DISBARRING, expelling a barrister from the bar, a power vested in the benchers of the four inns of court, subject to an appeal to the fifteen Judges.

DISBOSCATIO, a turning wood-ground into arable or pasture.

DISCARCARE, to unlade a ship or vessel.

DISCEIT. See **DECEIT**.

DISCENT. See **DESCENT**.

DISCLAIMER, a renunciation or a denial by a tenant of his landlord's title, either by refusing to pay rent, denying any obligation to pay, or by setting up a title in himself or a third person, and this is a distinct ground of forfeiture of the lease or other tenancy, whether of land or tithe; and where a tenant for a term of years under a lease delivered up possession of the premises and the lease, in fraud of his landlord, to a person who claimed under a hostile title, and not with the intention that he should hold under the lease, it was held that the term and lease were thereby forfeited. But a *qualified denial*, as an offer to pay rent, if the claimant, by derivative title, will adduce reasonable evidence of his right, will not necessarily amount to a disclaimer.

A devisee in fee may, by deed, without matter of record, disclaim the estate devised, and after such disclaimer, has no interest in the estate. *Chitty's Gen. Prac.* vol. i. p. 287.

An executor may, before probate, disclaim the executorship, and the executor of an executor may, before probate of the will of his own testator, disclaim to be the executor of the first testator, but he cannot so disclaim after he has proved the will of his own testator; for he thereby becomes, to all intents, his complete executor, and consequently the executor of the first testator. When an executor is, by the will, appointed trustee of any portion of the testator's personal effects, he cannot, after probate, disclaim the trusts: but where the executor is by the will made trustee of *real estate* devised to him alone, or to him and other persons in trust, it is considered doubtful whether even *after* probate he may not disclaim the office of trustee of the real estate. *Watkin's Conv.* 438.

A trustee who has not accepted may disclaim, but a conveyance by him of the trust-estate to a co-trustee, would amount to an acceptance of the trusts. An estate of freehold may be disclaimed as well by deed as by matter of record, and even by conduct; but a deed is the best evidence of disclaimer. *Sander's Uses and Trusts*, vol. i. p. 426; *Haye's Introd.* vol. ii. p. 72. The word "*disclaim*" is introduced in the 3 & 4 Wm. IV., c. 74, § 77, to obviate a question whether a married woman may disclaim. 7 *Cru. Dig.*, app. 12.

It is also a mode of defence in equity where the defendant renounces all claim to the subject of the demand made by the plaintiff's bill. But it can seldom be put in without an answer; for if the defendant have been made a party by mistake, having had an interest which he may have parted with, the plaintiff may require an answer sufficient to ascertain whether that is the fact or not; and if, in truth, it is so, an answer seems necessary to enable the plaintiff to make the proper person a party, instead of the

defendant disclaiming. A mere disclaimer, therefore, is scarcely to be deemed sufficient or proper, except where the bill simply alleges that the defendant claims an interest in the property in dispute, without more; for, under such circumstances, if he claim no interest, that is a sufficient answer to the allegation. *Story's Eq. Plead.* 642.

DISCONTINUANCE, an interruption or breaking off. This happened when he who had an estate-tail made a larger estate of the land than by law he was entitled to do: in which case the estate was good, so far as his power extended who made it, but no further. *Finch, L.* 190; *1 Rep.* 44. The learning relative to discontinuances has now become of no account, as far as future transactions are concerned, not merely in consequence of the abolition of fines, but by the effect of the 3 & 4 Wm. IV., c. 27, which provides (§ 39) that no discontinuance shall thereafter avail to take away the right of entry. Discontinuance was a wrong so forcible as to take away at once the right of entry; while disseisin, abatement, or intrusion did not, unless followed by a descent cast, take away that right.

A discontinuance at common law thus arises:—If a defendant plead only to part of a declaration, and say nothing as to the remainder, the plaintiff is entitled to sign judgment against him by *nil dicit*, as to the unanswered part of the declaration. But if the plaintiff demur or reply to the plea, without signing judgment for the part not answered, the whole action is said to be discontinued. A discontinuance is cured, however, after verdict, by the Statute of Jeofails, 32 Hen. VIII., c. 30; and after judgment, by *nil dicit*, confession, or *non sum informatus*, by 4 Anne, c. 16. And as the entries of continuances are now abolished (Rule, Hilary Term, 4 Wm. IV.), it may become a question in what cases a discontinuance will now amount to error. *Step. Plead.* 247.

A *rule to discontinue* is obtained by a plaintiff when he finds that he has misconceived his action, or that for some defect in the pleadings, or other reason, he will not be able to maintain it. It is granted only to plaintiffs; even an avowant in replevin cannot have it. The terms are in the discretion of the court, but it is always granted upon payment of costs. If a plaintiff in error make default after errors assigned, the writ of error will thereby be discontinued, and the defendant in error entitled to costs. By a general rule of all the courts, Hilary Term, 2 Wm. IV., r. 7, "after *non pros*, *nonsuit*, or discontinuance, the defendant shall not be arrested a second time without the order of a Judge. But see 1 & 2 Vict., c. 110, § 3; *Chit. Arch. Prac.* 358, 476, 1057. There is no need of a formal discontinuance of an action before a plaintiff proves his debt, or enters his claim against a bankrupt-defendant, under a fiat, for the proof or entry itself operates as a discontinuance of it. 8 Geo. IV., c. 16, § 59.

Discontinere nihil aliud significat quam intermittere, desuescere, interrumpere. (Co. Lit. 325.—(To discontinue signifies nothing else than to intermit, to disuse, to interrupt.)

DISCOVERT, a widow; a woman unmarried; one not within the bonds of matrimony.

DISCOVERY, revealing or disclosing a matter.

It has been truly said, that every bill in equity for relief is in reality a bill of discovery, since it asks from the defendant an answer upon oath as to all the matters charged in the bill, and seeks from him a discovery of all such matters. But a bill of discovery, emphatically so called, is a bill for the discovery of facts resting in the knowledge of the defendant, or of deeds, or writings, or other things, in his custody or power, and seeking no relief in consequence of the discovery, though it may pray for a stay of proceedings at law till the discovery is made. It is commonly used in aid of the jurisdiction of some court of law, to enable the party who prosecutes or defends an action at law to obtain a discovery of the facts, which are material to the prosecution or defence thereof. It is a vexed question upon which the authorities are contradictory, whether this bill lies in aid of a suit, or defence to a suit, in a foreign court. The bill must clearly show that it is brought by persons, and for objects and under circumstances, entitling it to be maintained by the court, for a plaintiff is entitled only to a discovery of what is necessary to maintain his own title, as, for example, deeds under which he claims. But he is not entitled to have a discovery of the title of the other party from whom he seeks the discovery. The plaintiff must show his title and interest, for a mere stranger cannot maintain a bill for the discovery of another's title. It must also state a case which will constitute a just ground for an action or defence at law. It must set forth somewhat correctly the plaintiff's title, and if it seek the discovery of deeds and accounts, it must also describe them with reasonable certainty. It must also state that the discovery is asked for the purpose of some suit brought, or intended to be brought; for otherwise it will not be maintained, as equity does not grant a discovery to gratify mere curiosity, but to aid some legal proceeding. The bill must generally show that the defendant has some interest in the matter of the discovery; for if he be a mere witness, the bill cannot ordinarily be maintained against him. It should set forth in particular the matters on account of which the discovery is sought; for the other party is not bound to make answer to vague and loose surmises.

The principal grounds upon which a bill of discovery may be resisted, are—(1), that the subject is not cognizable in any municipal court of justice; (2), that the court will not lend its aid to obtain a discovery for the particular court for which it is wanted; (3), that the plaintiff is not entitled to the

discovery by reason of some personal disability; (4), that the plaintiff has no title to the character in which he sues; (5), that the value of the suit is beneath the dignity of the court; (6), that the plaintiff has no interest in the matter, or title to the discovery required, or that an action will not lie for which it is wanted; (7), that the defendant is not answerable to the plaintiff, but that some other person has a right to call for the discovery; (8), that the policy of the law exempts the defendant from the discovery; (9), that the defendant is not bound to discover his own title; (10), that the discovery is not material to the suit; (11), that the defendant is a mere witness; (12), that the discovery called for would criminate the defendant.

When the bill does not pray relief, the cause is never brought to a hearing; and the defendant cannot move to dismiss the suit, but, upon filing his answer, he may, as soon as it is deemed sufficient, move for an order as of course, for his costs of suit. If after the defendant have answered, the suit becomes abated, it cannot be revived: where, therefore, the plaintiff was a *feme sole* when she filed the bill of discovery, and afterwards married, whereby the suit abated, the suit, it was held, could not be revived for costs—a hard determination, reluctantly followed by Lord Eldon, in *Dodson v. Juda*, 10 Ves. 31. With respect to affidavits accompanying bills of this description, the rule appears to be, that where a party comes only for discovery, he need not make oath, as he must do when he applies also for relief, because he has to pay the defendant his costs, which is deemed a sufficient protection to the defendant. *Hare on Discovery; Story's Eq. Plead.*, 252; *Maddock's Principles of Equity*, vol. i. p. 267; *Story's Eq. Jurisp.* vol. ii. 645; *Cooper's Eq. Pl.*, ch. 3, § 3, p. 189. *Discretio est scire per legem quid sit justum.* 10 Co. 140.—(Discretion is to know through law what is just.)

DISCOUNT, the sum refunded in a bargain. A deduction, according to the rate of interest, from money advanced beforehand. It is usually said to be of two kinds; viz., discount of bills, and discount of goods; but they are essentially the same. The rule for calculating discount on correct principles is as follows:—

As the amount of £100, for the given rate and time,

Is to the given sum or debt;

So is £100 to the present worth, or

So is the interest of £100 for the given time

To the discount of the given sum. *McCulloch's Comm. Dict.*

The usual method of discount is inaccurate, i. e., deducting 5l. per cent. at the commencement of the credit. The true discount for any given sum, for any given time, is such a sum as will in that time amount to the interest of the sum to be discounted: the proper discount, therefore, to

be received for the immediate advance of 100l., due twelve months hence, is not 5l., but 4l. 15s. 2½d., for this sum will, at the end of the year, amount to 5l., which is what the 100l. would have produced.

DISCUSSION. By the Roman law sureties were not primarily liable to pay the debt for which they became bound as sureties; but were liable only after the creditor had sought payment from the principal debtor, and he was unable to pay. This was called the benefit or right of discussion. Under those systems of jurisprudence which adopt the Roman law, and under the present law of France, the rule is similar; and the obligation contracted by the surety with the creditor is, that the latter shall not proceed against him until he has first discussed the principal debtor, if he is solvent. This right the surety enjoys, as the *beneficium ordinis vel excussionis*. And, again, if other persons are joined with him in the obligation as sureties, he is not in the first instance to be proceeded against for the whole debt, but only for his share of it, if his co-sureties and co-obligees are solvent. This is commonly known as the benefit of division, or *beneficium divisionis*. If the suit should be brought in a different country from that where the contract or obligation is made, the right of discussion or division would still belong to the surety, as an incident to his contract, although it did not exist by the law of the place where the suit was brought (*lex fori*). The converse proposition would be equally true. Such also is the lien of a vendor, upon a real estate sold for the payment of the purchase money, according to the law of England; the lien given for the purchase money upon goods or merchandise sold, by the civil law and by the law of some modern countries; the right of stoppage *in transitu* of the vendor of goods, in case of the insolvency of the purchaser in the course of the transit; the lien of a bottomry bond on the thing pledged; the lien of mariners on the ship for their wages; the priority of payment *in rem*, which the law sometimes attaches to peculiar debts or to particular persons. In these and like cases, where the lien or privilege is created by the *lex loci contractus*, it will generally, although not universally, be respected and enforced in all places where the property is found, or where the right can be beneficially enforced by the *lex fori*. And on the other hand, where the lien or privilege does not exist in the place of the contract, it will not be allowed in another country, although the local law, where the suit is brought, would otherwise sustain it. *Story's Conf. of Laws*, 456.

DISENFRANCHISE, or DISFRANCHISE, to deprive of freedom, privilege, or immunity.

DISFOREST. See **DISAFFOREST**.

DISGAVEL, to exempt from the tenure of gavelkind.

DISGRADING, the act of degrading; a degradation.

DISHERISON, the act of debarring from inheritance.

DISHERITOR, one who puts another out of his inheritance.

DISINCARCERATE, to set at liberty, to free from prison.

DISINHERISON. See **DISHERISON**.

DISME [*decimæ*], a tenth, the tenth part, tithes due to the clergy, the tenth of all spiritual livings. 2 & 3 Edwd. III. c. 55.

DISMISSION OF BILL. A bill in equity may be dismissed by the court at the hearing. *Orders*, 26th August, 1841, xxxix. Also by the plaintiff before decree, when he is not able to prosecute his suit effectually, either as against all the defendants, or as against such of them as he thinks he can dispense with. After decree the bill can only be dismissed upon re-hearing or appeal: and by the defendant either for want of prosecution, or upon an abatement of the suit by the death of the plaintiff or otherwise. *Orders*, 8th May, 1845, 114, &c.

DISMORTGAGE, to redeem from mortgage.

DISPARAGEMENT, the matching an heir in marriage under his degree or against decency. *Co. Lit.* 107.

Disparata non debent jungi. Jenk. Cent. 24.—(Unequal things ought not to be joined.)

DISPATCHES, a packet of letters, &c., sent by a public officer on some affair of state or public business.

DISPAUPER. When a person by reason of his poverty is admitted to sue *in formâ pauperis*; if afterwards, before the suit be ended, the same person have any lands or personal estate fallen to him, or be guilty of anything whereby he is liable to have this privilege taken from him, then he is put out of the capacity of suing *in formâ pauperis*, and is then said to be dispaupered.

DISPENSATION, an exemption from some law, a permission to do something forbidden, an allowance to omit something commanded.

Dispensatio est mali prohibiti provida relaxatio, utilitate seu necessitate pensata; et est de jure domino regi concessa, propter impossibilitatem prævidendi de omnibus particularibus. 10

Co. 88.—(A dispensation is the provident relaxation of a prohibited evil, weighed from utility for necessity; and it is conceded by law to the Lord King on account of the impossibility of foreknowledge concerning all particulars.)

Dispensatio est vulnus, quod vulnerat jus commune. Dav. 69 —(A dispensation is a wound, which had wounded common right.)

DISPERSONARE, to scandalize or disparage. *Blount*.

DISPUNISHABLE, without penal restraint.

DIRATIONARE, or **DIRATIONARE**, to justify; to clear one's self of a fault; to traverse an indictment; to disprove. *Encyc. Lond.*

DISSECTION, anatomy, regulated by 2 & 3 Wm. IV., c. 75, the sixteenth section of which takes away the act of dissection of the bodies of criminals, who had been hanged for murder.

DISSEISE, to dispossess; to deprive.

DISSEISEE, a person turned out of possession.

DISSEISIN [*dissarsin*, Fr.], a wrongful putting out of him that is seised of the freehold, not, as in *abatement* or *intrusion*, a wrongful entry, where the possession was vacant; but an attack upon him who is in actual possession, and turning him out: it is an ouster from a freehold in deed, as abatement and intrusion are ousters in law. 3 *Step. Com.* 483.

Disseisinam satis facit, qui uti non permittit possessorem, vel minus commode, licet omnino non expellat. *Co. Lit.* 331.—(He makes disseisin enough, who hinders possession to be enjoyed, or less fitly, though he does not expel altogether.)

DISSEISOR, a person who puts another out of his land without order of law.

DISSEISORESS, a woman who puts another out of possession.

DISSENTERS, Protestant seceders from the Established Church, formerly denominated *non-conformists*, and descended from the *Puritans*. They are usually divided into the three denominations of Presbyterians, Independents, and Baptists; but as to church government, the Baptists are Independents. With respect to the penal laws, which tend to the enforcement of legal uniformity, they are all either abrogated, or made subject to important relaxations or exceptions. The 19 Geo. III., c. 44, provides that any dissenting preachers or teachers may keep schools or instruct youth; the 9 Geo. IV., c. 17, repealed the Corporation and Test Acts, and a new form of declaration substituted in lieu of taking the Sacrament. The 7 & 8 Vict., c. 45, provides for meeting-houses or chapels founded for dissenters.

DISSIGNARE, to break open a seal.

Dissimilium dissimiles est ratio. *Co. Lit.* 191.—(Of dissimilars the rule is dissimilar.)

DISSOLUTION, the act of breaking up an assembly; loosening anything compacted or united. A partnership may be dissolved either by a proper notice, or effluxion of time, as agreed upon in the articles of partnership, or by death, marriage, lunacy, bankruptcy, insolvency, or decree in equity, &c. *Story on Partnership*, 383.

A dissolution is the civil death of the Parliament, and is effected in three ways:—(1.) By the Sovereign's will, expressed either in person or by representation, which is a branch of the royal prerogative. (2.) By the demise of the Crown. The 7 & 8 Wm. III., c. 15; 6 Ann., c. 7; and 37 Geo. IV., c. 127, enact that the Parliament in being shall continue for six months after the death of any king or queen, unless sooner prorogued or dissolved by the successor; that if the Parliament be, at the time of the king's death, separated by adjournment or prorogation, it shall, notwithstanding, assemble immediately; that in case of the demise of the king between the dissolution of a Parliament and the day appointed by the writs of summons for the new one, the last preceding Parliament shall immediately convene for six months, unless

sooner prorogued or dissolved by his successor; and that in the event of the king's death on or after the day appointed for assembling the new Parliament, but before it has assembled, then the new Parliament shall, in like manner, convene for six months, unless sooner prorogued or dissolved. (3.) By length of time, i. e., seven years. 1 Geo. I., st. 2, c. 38.

Distinguenda sunt tempora, aliud est facere, aliud perficere.—(Times are to be distinguished; it is one thing to do, another to complete.)

Distinguenda sunt tempora; distingue tempora, et concordabis legis. 1 Co. 24.—(Times are to be distinguished; distinguish times, and you will attune laws.)

DISTRAIN, to make seizure of goods or chattels by way of distress.

DISTRAINER, he who seizes a distress.

DISTRAINT, seizure.

DISTRESS, a taking, without legal process, a personal chattel from the possession of a wrong-doer into the hands of a party grieved, as a pledge for the redressing an injury, the performance of a duty, or the satisfaction of a demand. The power of distress is derived either (1), by common right—as where a person seized in fee grant out a lesser estate with the reversion to himself, and a reservation of rent or other services, the law gives him this remedy for such rent or services without any express provision; (2), by special powers—as where one not being the reversioner, and consequently not able to distrain of common right, may, on granting a lease by express stipulation, reserve to himself the power of distraining. A distress may be made of common right for all rent-service, and by particular reservation to rent-charges also, but not to rents-*seek* till the 4 Geo. II., c. 28, § 5, extended the same remedy to rents-*seek*, rents of assize, and chief-rents, and thereby in effect abolished all material distinction between them. With respect to fee farm rents it has been held that distress is not incident to them, except the case be brought within the 4 Geo. II., c. 28, § 5. *Bradbury v. Wright*, 2 Dougl. 624.

Distress may also be made on cattle damage feasant, for annuities and rent-charges, rates and taxes, penalties and tolls imposed by bye-laws, and under the Tithe Commutation Act, 6 & 7 Wm. IV., c. 71.

Accepting security for the rent, as a bond, bill of exchange, or promissory note, will not take away the right to distrain, for the rent is of a higher nature, and the acceptance of a security of an unequal degree is no extinguishment of the claim. It may be generally stated that so long as the rent is in arrears the landlord has the power of distraining for it, and nothing but payment or tender will take away such power. The right to distrain depends upon an actual demise to the tenant at a *fixed* rent. All persons seized in fee, who have granted out a lesser estate with a reservation of rent, may distrain for rent in arrear. A mortgagee

after giving notice of the mortgage to the tenant in possession under a lease prior to the mortgage, may distrain for the rent in arrear at the time of the notice, as well as for rent which may accrue after such notice, although he was not in the actual seisin of the premises, nor in the receipt of the rents and profits at the time it became due: but he may not distrain for rent due upon a lease made *after* the mortgage, unless he has accepted rent from the tenant, or has given him notice to pay rent and the tenant has acquiesced. Executors, before probate, and administrators may distrain, 3 & 4 Wm. IV., c. 42, §§ 37, 38. Receivers appointed by the Court of Chancery can distrain, and need not apply first to the court for a particular order for that purpose. By 8 & 9 Vict., c. 106, § 9, it is enacted “that when the reversion expectant on a lease made either before or after the passing of this act, of any tenements or hereditaments of any tenure, shall, after the said 1st day of October, 1845, be surrendered or merge, the estate which shall for the time being confer as against the tenant under the same lease, the next vested right to the same tenements or hereditaments, shall, to the extent and for the purpose of preserving such incidents to, and obligations on, the same reversion, as, but for the surrender or merger thereof, would have subsisted, be deemed the reversion expectant on the same lease.”

All chattels and personal effects found upon the premises, may be distrained, whether they belong to the tenant or a stranger, *except* goods of third persons which happen to be upon the tenant's premises in the way of his trade; goods in the hands of a factor; goods and utensils of trade, while there is any other property on the premises, or whilst they are in actual use; cattle and goods of a temporary guest at an inn, &c.; fixtures, being part of the freehold; goods in the custody of the law; wearing apparel, if in actual use; and animals, *feræ naturæ*.

A distress cannot be made in the night, i. e., after sunset and before sunrise; nor on the same day on which the rent becomes due, but must be made within six years from its becoming due. The 8 Anne, c. 14, §§ 6, 7, gives a landlord power to distrain, within six calendar months, after determination of the lease, brought during the continuance of the landlord's title or interest, and also during the possession of the tenant. It must be made upon the land whence the rent issues, and the whole of what is due should be distrained for at one time. The outer door of the house can in no case be broken open: but if the outer door be open, the person distraining may justify breaking open an inner door or lock, to find any goods distrainable. The distress may be made either by the landlord himself, or by an authorised agent, who is called a bailiff, under a warrant of distress. An inventory of as many goods as are judged sufficient to cover the rent distrained for, and also the charges of the dis-

treas, must then be made, which is served personally on the tenant, together with a notice of the fact of the distress having been made, and the time when the rent and charges must be paid, or the goods replevied. When the distress has been thus made, it is always the safest way to remove the goods immediately, and in the notice to acquaint the tenant whither they are removed. In many cases, however, the tenant, for his own convenience, requests the landlord to permit them to remain on the premises, and consents to allow him to retain possession beyond the five days given for replevying; in such cases a written consent should be procured, and some person left in possession of the goods upon the premises. As to the landlord's right of following for thirty days, goods fraudulently removed, see 11 Geo. II., c. 19.

The landlord cannot sell the goods distrained before the expiration of the five days allowed by the statute 2 W. & M., sess. 1, c. 5, which five days are inclusive of the day of the sale, but exclusive of the time of the sale; therefore the distress may be removed on the sixth day. Before sale an appraisal must be made by two sworn appraisers; and the sheriff's office should be searched to see if the goods have been replevied. If there be any surplus from the sale, it must be handed over to the tenant. But where the value of the goods distrained is not sufficient to cover the rent, &c., a second distress will be allowed. 17 Car. II., c. 7, § 4. The expenses of distresses for less than 20*l.*, are regulated by 57 Geo. III., c. 93.

The remedies for a wrongful distress are replevin; an action of trespass *de bonis asportatis*, or *quare clausum fregit*, for damages; an action of detinue for the thing distrained itself, or trover for its value. The remedy for an irregular distress is an action of trespass, or on the case, for the special damage, 11 Geo. II., c. 19, § 19. The proper remedy for an excessive distress, is a special action on the cases founded upon the statute of Marlborough, 52 Hen. III., c. 21. *Woodfall's Land. and Tenant*, 310.

DISTRESS INFINITE, one that has no bounds with regard to its quantity, and may be repeated from time to time, until the stubbornness of the party is conquered. Such are distresses for fealty or suit of court, and for compelling jurors to attend. 3 *Bl. Com.* 231.

DISTRESSES, pledges taken by the sheriff from those who came to fairs, for their good behaviour: which, at the end of the fair or mercat, were delivered back, if no harm were done. *Scotch Term.*

DISTRIBUTION, the act of dealing out to others; dispensation. The Statute of Distributions (sometimes called a Parliamentary Will), 22 & 23 Car. II., c. 10, explained by 29 Car. II., c. 3, enacts, that the surplusage of intestates' personal estate (except of *femes covert*, the administration and enjoyment of

whose estates belong, by the principle of the common law, to their husbands) shall, after the expiration of one full year from the death of the intestate, be distributed in the following manner:—one-third shall go to the widow of the intestate, and the residue in equal proportions to his children, or, if dead, to their representatives, that is, their lineal descendants; if there be no children or legal representatives subsisting, then a moiety shall go to the widow, and a moiety to the next of kindred, in equal degree, and their representatives; if no widow, the whole shall go to the children; if neither widow nor children, the whole shall be distributed amongst the next of kin, in equal degree, and their representatives; but no representatives are admitted among collaterals farther than the children of the intestate's brothers and sisters. The intestate's mother-in-law takes nothing. The following relations are considered as of the same degree of kindred:—(1) parents and children; (2), grand-father, grandson, and brother; (3), great-grand-father, great-grandson, uncle, and nephew; (4), great-great-grandfather, great-great-grandson, great-uncle, great-nephew, first cousin. The half blood take equally with the whole blood, in the same degree.

DISTRIBUTIVE FINDING OF THE ISSUE. The jury are bound to give their verdict for that party who, upon the proof, appears to them to have succeeded in establishing his side of the issue. But there are cases in which an issue may be found distributively, i. e., in part for plaintiff and in part for defendant. *Step. Plead.* 91.

DISTRICT [*districtus*], the circuit or territory within which a person may be compelled to appear. *Cowel.* Circuit of authority; province. *Encyc. Lond.*

DISTRICT PARISHES, ecclesiastical divisions of parishes for all purposes of worship, and for the celebration of marriages, christenings, churchings, and burials; formed at the instance of "Her Majesty's Commissioners for Building New Churches."

DISTRICTIONE SCACCARII. The 51 Hen. III., st. 5, relating to distresses in the Exchequer for the King's debts.

DISTRICATIO, a distress, a distraint.

DISTRINGAS (that you distrain), anciently called *constringas*, a writ addressed to the sheriff, and issued to effect various purposes. Those used in common law proceedings may be thus stated:—

1. A *distringas* to compel appearance, where defendant has a place of residence within England or Wales. This proceeding is provided for by 2 Wm. IV., c. 39, § 3, which enacts that, "in case it shall be made appear by affidavit, to the satisfaction of the court out of which the process issued, or in vacation, of any Judge of either of the Superior Common Law Courts, that any defendant has not been personally served with a copy of the writ of summons, and has not, according to the exigency thereof, appeared to the action, and cannot be compelled so to

do without some more efficacious process (although two appointments have been made, and a copy of the writ of summons has been left for him at his actual or last place of abode), then, and in any such case it shall be lawful for such court or Judge to order a writ of *distringas* to be issued, directed to the sheriff of the county wherein the dwelling house or place of abode of such defendant shall be situate, or to the sheriff of any other county, or to any other officer to be named by such court or Judge, in order to compel the appearance of such defendant, which writ of *distringas* and notice, or a copy thereof, shall be served on such defendant, if he can be met with, or if not, shall be left at the place where such *distringas* shall be executed; and a true copy of every such writ and notice shall be delivered together therewith to the sheriff or other officer to whom such writ shall be directed; and every such writ shall be made returnable on some day in term, not being less than fifteen days after the teste thereof, and shall bear teste on the day of the issuing thereof, whether in term or in vacation; and if such writ of *distringas* shall be returned *non est inventus* and *nulla bona*, and the party suing out such writ shall not intend to proceed to outlawry or waiver, according to the authority herein-after given; and any defendant against whom such writ of *distringas* issued shall not appear at or within eight days inclusive after the return thereof, and it shall be made appear by affidavit, to the satisfaction of the court out of which such *distringas* issued, or in vacation, of any Judge of either of the said courts, that due and proper means were taken and used to serve and execute such writ of *distringas*, it shall be lawful for such court or Judge to authorise the party suing out such writ to enter an appearance for such defendant, and to proceed thereon to judgment and execution." If the *distringas* can be executed, a distress is made on the defendant's chattels to the amount of 40s., or less if he have no more, and on the ninth day inclusive after the return day of the *distringas*, the plaintiff may enter an appearance without any leave or affidavit, provided the defendant have not done so. Upon an appearance entered, the defendant is entitled to have his goods back again. As to the *distringas* to compel a defendant in replevin to appear, after the plaint has been removed into a superior court, see *Chit. Arch. Prac.* 797. A *distringas nuper vicecomitem*, to compel the late sheriff to bring in the body, is obsolete. *Ibid.* 554.

2. A *distringas in detinue*, a special writ of execution to compel defendant to deliver the goods by repeated distresses of his chattels; or a *scire facias* might be issued against any third person in whose hands they may happen to be, to show cause why they should not be delivered; and if the defendant still continue obstinate, then (if the judgment have been by default or on demurrer), the sheriff shall summon an inquest to ascertain

the value of the goods and the plaintiff's damages, which (being either so assessed, or by the verdict in case of an issue) shall be levied on the goods or person of the defendant. 1 *Rol. Ab.* 737. As to *Distringas in quare impedit*, see *QUARE IMPEDIT*.

3. *Distringas juratores*, a process issuing out of the Queen's Bench and Exchequer of Pleas upon the jurors making default (as is supposed) at the return of the *venire facias*, commanding the sheriff to distrain the jurors already returned on the *venire*, by their goods, so that he may have their bodies before the Queen at Westminster, on a day therein mentioned, to make a certain jury between the parties, &c. In practice, however, the *venire* and *distringas* are sued out at the same time, and upon being delivered to the sheriff or his agent, he immediately returns them, and causes the jurors to be summoned, who afterwards appear at the place of trial according to the exigency of the writ and summons. This is when the trial is intended to be *at bar*; but if it be intended to be at *Nisi Prius*, the *venire* is made returnable forthwith, and the *distringas* before the Queen or the Barons of the Exchequer on the return day next after the time at which the cause is intended to be tried, *unless before* that time the chief justice or the judges of assize should come on a certain day therein mentioned to the place intended for trial, and which of course is always the case, and the sheriff accordingly summonses the jury to attend at the time and place mentioned in the clause of *Nisi Prius*. The *distringas*, except in trials at bar, may be tested in term or vacation on a day subsequently to the teste of the *venire*. It is returnable on a day in term after the sittings at which the trial takes place, or if at the assizes, generally on the first day of the term after the trial; at law, on the day on which the trial is to be had. *Chit. Arch. Prac.* 249. As to *distringas* in outlawry, see *OUTLAWRY*.

In equity, a *distringas* is issued in these two cases:—

1. Against a corporation aggregate; the first process to compel appearance is *distringas*, and on its return, an *alias distringas*, and then a *pluries* are issued, and upon the return of the latter, if default is made, an order *nisi* for a sequestration is obtained as of course, and if no cause shewn, the order will be made absolute. 11 Geo. IV., & 1 Wm. IV., c. 36.

2. By 5 Vict., c. 5, § 4, the Court of Chancery may, on motion or petition in a summary way, without bill filed, restrain the Bank of England or other public company from permitting a transfer of stock or shares, or from paying any dividend. And by Orders of Chancery, 17th November, 1841, the mode of proceeding, by writ of *distringas* on stock under that statute, is regulated.

DISTURBANCE, the wrongful obstruction of the owner of an incorporeal hereditament, in its exercise or enjoyment. There are five

sorts of this injury, viz., disturbance of (1) franchise, (2) common, (3) ways, (4) tenure, and (5) patronage. 3 *Step. Com.* 510.

DISTURBER. If a bishop refuse or neglect to examine or admit a patron's clerk, without reason assigned or notice given, he is styled a disturber by the law, and shall not have any title to present by lapse; for no man shall take advantage of his own wrong. 2 *Bl. Com.* 278.

DITTAY, the manner of proceeding against a criminal in the Court of Justiciary. *Scotch Term.*

DITTO [*detto*, Ital.], the aforesaid, or the same.

DIVAN [an Arabic or Turkish word], a council-room.

DIVERSITY, a plea by a prisoner in bar of execution, alleging that he is not the same who was attainted; upon which a jury is immediately impanelled to try the collateral issue thus raised, viz., the identity of the person; and not whether he is guilty or innocent, for that has been already decided. 4 *Bl. Com.* 396.

DIVEST. See **DEVEST.**

Divide et impera, cum radix et vertex imperii in obedientium consensu rata sunt. 4 *Inst.* 35.—(Divide and govern, since the foundation and crown of empire are established in the consent of the obedient.)

DIVIDEND, a share, the part allotted in division; the interest paid on the public funds; the division of a bankrupt's effects, which is provided for by the 5 & 6 *Vict.*, c. 122, §§ 27, 55, and *General Orders* of 12th November, 1842; and insolvents' dividends by 1 & 2 *Vict.*, c. 110.

DIVIDENDA, an indenture; one part of an indenture. *Old Records.*

Divinatio, non interpretatio est, quæ omnino recedit à literâ. Bacon.—(It is guessing, not interpretation, which altogether differs from the letter.)

DIVINE SERVICE, *tenure by*, an obsolete holding, in which the tenants were obliged to do some special divine services in certain, as to sing so many masses, to distribute such a sum in alms, &c. *Litt.* § 137.

DIVISA, a device, award, or decree; also a devise; also bounds or limits of division of a parish or farm, &c. *Cowel.* Also a court held on the boundary, in order to settle disputes of the tenants. *Anc. Inst. Eng.*

Divisibilis in semper divisibilia.—(A thing divisible may be for ever divided.)

DIVORCE [*divortium*], the dissolution of the marriage contract; it is either total, à *vinculo matrimonii*; or partial, à *mensâ et thoro*. See the phrases.

As the ancient Hebrews paid a stipulated price for the privilege of marrying, they seemed to consider it the natural consequence of making a payment of that kind that they should be at liberty to exercise a very arbitrary power over their wives, and to renounce or divorce them whenever they chose. This state of things, as Moses himself very clearly saw, was not equitable as respected the

woman, and was very often injurious to both parties. Finding himself, however, unable to overrule feelings and practices of very ancient standing, he merely annexed to the original institution of marriage a very serious admonition to this effect: viz., that it would be less criminal for a man to desert his father and mother than, without adequate cause, to desert his wife. He also laid a restriction upon the power of the husband so far as this, that he would not permit him to repudiate the wife without giving her a bill of divorce. He further enacted that the husband might receive the repudiated wife back, in case she had not, in the meanwhile, been married to another person.

He had liberty to divorce her if he saw in her *the nakedness of a thing*. These expressions, however, were sharply contested as to their meaning in the later times of the Jewish nation. The school of Hillel contended that the husband might lawfully put away the wife for any cause, even the smallest. The mistake committed by the school of Hillel in taking this ground was, that they confounded moral and civil law. It is true, as far as the Mosaic statute or the civil law was concerned, the husband had a right thus to do; but it is equally clear that the ground of legal separation must have been, not a trivial, but a prominent and important one, when it was considered that he was bound to consult the rights of the woman, and was amenable to his conscience and his God. The school of Shammai explained the phrase "*nakedness of a thing*," to mean actual *adultery*. This interpretation of the phrase gives to the law a moral aspect, and assigns a reason, as the ground of divorce, of the truest moral nature; but the truth is that the phrase, in itself considered, will not bear this interpretation, and the law, beyond question, was designed to be merely a *civil* and not a moral one. *Jahn's Bib. Antiq.*, ch. x., § 160.

Divortium dicitur à divertendo, quia vir divertitur ab uxore. Co. Lit. 235.—(Divorce is called from *divertendo*, because a man is diverted from his wife.)

DO, UT DES (I give, that you give).

DO, UT FACIAS (I give, that you perform).

DOCKET, or **DOGGED**, a list; a brief writing on a small piece of paper or parchment, containing the effect of a greater writing; a register. Also the entry made by the secretary of bankrupts, when a petitioning creditor's affidavit of debt is lodged with him for the purpose of issuing a fiat in bankruptcy, technically called "striking a docket."

DOCTORS' COMMONS, an institution near St. Paul's Cathedral, where the ecclesiastical and admiralty courts are held. In 1768 a royal charter was obtained, by virtue of which the members of the society and their successors were incorporated under the name and title of "The College of Doctors of Laws exercent in the Ecclesiastical and Admiralty Courts." The college consists of a

president (the Dean of the Arches for the time being) and of those doctors of laws who, having regularly taken that degree in either of the Universities of Oxford and Cambridge, and having been admitted advocates in pursuance of the rescript of the Archbishop of Canterbury, shall have been elected fellows of the college in the manner prescribed by the charter.

DOCUMENTS, records, writings, precepts, instructions, or directions.

DOG-DRAW, the manifest deprehension of an offender against venison in a forest, when he is found drawing after a deer by the scent of a hound led in his hand; or where a person has wounded a deer or wild beast, by shooting at him or otherwise, and is caught with a dog drawing after him to receive the same. *Manwood*, p. 2, c. 8.

DOGGER, a light ship or vessel; *dogger-fish*, fish brought in ships.

DOGGER-MEN, fishermen that belong to dogger-ships.

DOITKIN, or **DOIT**, a base coin of small value, prohibited by 3 Hen. V., c. 1.

DO LAW [*facere legem*], to make law.

DOLE, the act of distribution or dealing.

DOLE-FISH, the share of fish which the fishermen yearly employed in the north seas customarily receive for their allowance.

DOLE-MEADOW, one wherein divers persons have a share.

DOLI CAPAX (capable of crime).

DOLI INCAPAX (incapable of crime).

DOLG-BOTE [*dolg*, Sax., wound, and *bote*, recompence], a recompence for a scar or wound.

Dolus versatur generalibus. 2 Co. 34.—(A deceiver deals in generals.)

Dolus auctoris non nocet successori.—(The fraud of a possessor prejudices not the successor.)

Dolus circuitu non purgatur. Bacon.—(Fraud is not purged by circuitry.)

Dolus est machinatio cum aliud dissimulat aliud agit. Lane 47.—(Deceit is an artifice, since it pretends one thing, and does another.)

DOMBOC, or **DOMBEC** [Sax.], dome-book.

DOME, or **DOOM** [Sax.], a judgment, sentence, or decree.

DOME-BOOK [*liber judicialis*], a book composed under the direction of Alfred, for the general use of the whole kingdom, containing the local customs of the several provinces of the kingdom. This book is said to have been extant so late as the reign of Edward IV., but it is now lost. It probably contained the principal maxims of the common law, the penalties for misdemeanours, and the forms of judicial proceedings. Thus much at least may be collected from the injunctions to observe it which were found in the laws of Edward the Elder, son of Alfred. 1 *Bl. Com.* 64.

Alfred has generally been styled the *legum Anglicanarum conditor*, as Edward the Confessor is the *restitutor*; but, Palgrave says, "the authentic code of the legislature does not support these assertions. The laws of

Alfred abound in valuable regulations of criminal jurisprudence, but they are entirely silent with respect to those institutions which, according to later historians, are to be ascribed to his sound policy and wisdom." *Rise and Prog. of Eng. Commonwealth*, 46.

DOMESDAY, or **DOMESDAY-BOOK** [*liber judicarius vel censualis Angliæ*], a most ancient record made in the time of William the Conqueror, and now remaining in the Exchequer fair and legible, consisting of two volumes, a greater and a lesser; the greater containing a survey of all the lands in England, except the counties of Northumberland, Cumberland, Westmoreland, Durham, and part of Lancashire, which, it is said, were never surveyed; and excepting Essex, Suffolk, and Norfolk, which three last are comprehended in the lesser volume. There is also a third book, which differs from the others in form more than in matter, made by the command of the same king. And there is a fourth book kept in the Exchequer, which is called Domesday, and, though a very large volume, is only an abridgment of the others. Likewise a fifth book is kept in the Remembrancers' Office in the Exchequer which has the name of Domesday, and is the very same with the fourth above mentioned. Our ancestors had many dome-books. The question whether lands are ancient demesne or not, is to be decided by the Domesday of Wm. I., whence there is no appeal. The addition of *day* to this Dome-book, was not meant with any allusion to the final day of judgment, as most persons have conceived, but was to strengthen and confirm it, and signifies the judicial decisive record or book of dooming justice and judgment. *Spelman*.

DOMESMEN [hence, *Æg deme*, I judge], Judges or men appointed to doom and determine suits and controversies. See **DAYS-MEN**.

DOMESTICS, menial servants, so called from being *intra mænia* (within the walls). The contract between them and their masters arises upon the hiring. In this country it is usual to engage domestic servants at a fixed amount of wages per annum. But there is generally no express stipulation as to the time that the service is to last; and when the terms are not otherwise defined, the contract is thus understood, that either party may determine the service at pleasure, upon a month's warning or upon payment of a month's wages. A clerk or person who serves in an office of business, though employed in some sense *intra mænia*, is nevertheless no menial within the sense here used. If hired without any mention of time, he is engaged by the year (at least if the wages be payable by the year or quarter), and cannot be turned off at a month's notice, like a common domestic. 2 *Step. Com.* 270.

DOMICELLUS, a better sort of servant in monasteries; also an appellation of a king's bastard. *Encyc. Lond.*

DOMICILE, a place where a person has his home.

By the term "domicile," in its ordinary acceptation, is meant the place where a person lives, or has his home. In this sense, the place where a person has his actual residence, inhabitancy, or commorancy, is sometimes called his domicile. In a strict and legal sense, that is properly the domicile of a person where he has his true fixed permanent home and principal establishment, and to which, whenever he is absent, he has the intention of returning (*animus revertendi*).

Two things, then, must concur to constitute domicile: first, residence; and, secondly, the intention of making it the home of the party. There must be the fact, and the intent; for, as Pothier has truly observed, a person cannot establish a domicile in a place, except it be *animo et facto*.

From these considerations and rules the general conclusion may be deduced, that domicile is of three sorts: domicile by birth, domicile by choice, and domicile by operation of law. The first is the common case of the place of birth, *domicilium originis*; the second is that which is voluntarily acquired by a party, *proprio Marte*; the last is consequential, as that of the wife arising from marriage. *Story's Const. of Law*, chap. iii.

DOMIGERIUM, power over another; also, danger. *Bract. l. 4, t. 1, c. 10*.

DOMINA, a title given to honorable women, who anciently, in their own right of inheritance, held a barony.

DOMINANT TENEMENT, a term used in the Scotch law in the constitution of servitudes, and means the tenement or subject in favour of which the service is constituted, as the tenement over which the servitude extends, is called the servient tenement. *Bell*.

DOMINICA IN RAMIS PALMARUM, Palm Sunday.

DOMINICAL, that which denotes the Lord's Day, or Sunday.

DOMINICIDE [*dominus*, Lat., master, and *cedo*, to kill], the act of killing one's lord or master.

DOMINIUM DIRECTUM, and **DOMINIUM UTILE**, Scotch terms distinguishing the rights of the superior and vassal.

Dominium non potest esse in pendent.—(Lordship cannot be in depending.)

DOMINUS, this word, prefixed to a man's name, in ancient times, usually denoted him a knight or a clergyman, a gentleman or a lord of the manor.

Dominus aliquando non potest alienare.—(A lord sometimes cannot alienate.)

Dominus capitalis loco hæredis habetur, quoties per defectum vel delictum, extinguatur sanguis sui tenentis. Co. Lit. 13.—(The supreme lord takes the place of the heir, as often as the blood of the tenant is extinct through deficiency or crime.)

Dominus non maritabit pupillum nisi semel. Co. Lit. 79.—(A lord cannot marry a ward but once.)

DOMINUS LITIS, an advocate who, after the

death of his client, prosecuted a suit to sentence for the executor's use. *Civil Law*.

DOMITÆ NATURÆ, tame and domestic animals, as horses, kine, sheep, poultry, &c.

DOMITELLUS, a title anciently given to the French Kings' natural sons. See **DOMICELLUS**.

DOMO REPARANDA, a writ that lay for one against his neighbour, by the anticipated fall of whose house he feared a damage and injury to his own. *Reg. Orig.* 153.

DOMUS CONVERSORUM, an ancient house built or appointed by King Henry III. for such Jews as were converted to the Christian faith; but King Edward III., who expelled the Jews from this kingdom, deputed the place for the custody of the rolls and records of the Chancery.

DOMUS DEI, the House of God, applied to many hospitals and religious houses.

Domus sua cuique est tutissimum refugium. 5 Rep. 92.—(To every one his own house is the safest refuge.)

Dona clandestina sunt semper suspiciosa. 3 Co. 81.—(Clandestine gifts are always suspicious.)

DONARY, a thing given to sacred uses.

DONATIO CAUSA MORTIS, a gift in prospect of death; a death-bed disposition; it is a sort of amphibious gift, between a gift *inter vivos* and a legacy, and it is not valid; (1), unless the gift be with a view to the donor's death; (2), unless it be conditioned to take effect only on the donor's death, by his existing disorder, or in his existing illness; and (3), unless there be an actual delivery of the subject of donation. There may be a good donation of anything which has a physical existence, and admits of a corporal delivery: as jewels, gems, a bag of money, a trunk of goods, and even of things of bulk, which are capable of possession by a symbolical delivery; such as goods in a warehouse, by a delivery of the key of the warehouse. All negotiable notes and bills of exchange, exchequer and bank notes, bonds and mortgages, may be the subjects of a *donatio mortis causa*.

It differs from a legacy in these respects:—

(1) It needs not be proved, nay, it cannot be proved as a testamentary act in the ecclesiastical courts; for it takes effect as a gift from the delivery by the donor to the donee in his life-time. (2) It requires no assent or other act on the part of the executor or administrator to perfect the title of the donee. It differs from a gift *inter vivos*, in several respects, in which it resembles a legacy. (1) It is ambulatory, incomplete, and revocable, during the donor's life-time. (2) It may be made to the wife of the donor. (3) It is liable to the debts of the donor upon a deficiency of assets.

The ecclesiastical courts have no jurisdiction in these cases, and courts of equity maintain a concurrent jurisdiction in all cases of such donations, where the remedy at common law is not adequate or complete. *Story's Eq. Juris.*, vol. 1, p. 485; *Williams' Executors and Administrators*.

Donatio non præsumitur.—(A gift is not presumed.)

Donatio perficitur possessione accipientis. Jenk. Cent. 109.—(A gift is perfected by possession of the receiver.)

Donatio principis intelligitur sine præjudicio tertii. Davis, 75 b.—(A gift of the prince is understood, without prejudice of a third party.)

Donationum alia perfecta, alia incepta et non perfecta; ut si donatio lecta fuit et concessa, ac traditio nondum fuerit subsequuta. Co. Lit. 56.—(Some gifts are perfect, others incipient or not perfect; as if a gift were read and agreed to, but delivery had not then followed.)

DONATIVE, a species of advowson, when the Queen or any subject by her licence founds a church or chapel, and ordains that it shall be merely in the gift or disposal of the patron; subject to her visitation only, and not to that of the ordinary; and vested absolutely in the clerk by the patron's deed of donation without presentation, institution, or induction. This is said to have been anciently the only way of conferring ecclesiastical benefices in England. If the patron once waive the privilege of donation and present to the bishop, and his clerk is admitted and instituted, the advowson becomes presentative, and shall never be donative any more. 2 Bl. Com. 23.

DONATORY, the person on whom the King bestows his right to any forfeiture that has fallen to the Crown. Scotch Law.

Donatur nunquam desinit possidere antequam donatarius incipiat possidere. Dyer, 281.—(He who gives never ceases to possess before that the receiver begins to possess.)

DONEE [*dono*, Lat.], one to whom a gift is made.

DON GRANT ET RENDER, a fine sur, was a double fine, comprehending the fine sur cognizance de droit come ceo, &c., and the fine sur concessit, and might have been used to create particular limitations of estates; whereas the fine sur cognizance de droit come ceo, &c., conveyed nothing but an absolute estate, either of inheritance, or at least of freehold. 1 Step Com. 519.

DONIS CONDITIONALIBUS, Statute de, 13 Edward I., A. D. 1286. At the date of this statute a gift to a man and the heirs of his body, provided that if he had no heirs the lands to revert, was construed to give the donee a conditional fee, which enabled him, after issue begotten, to alien the land, and thereby to disinherit the issue, and to deprive the donor of his right of reverter. This interpretation is declared by this statute to be "contrary to the minds of the givers, and the form expressed in the gift:" wherefore it is ordained that the "will of the giver, according to the form in the deed of gift manifestly expressed, be henceforth observed; so that they to whom the land is given under such condition, shall have no power to alien the land so given, but that it shall remain unto the issue of them to whom

it is given after their death, or shall revert to the giver or his heirs if issue fail, or there is no issue at all. And if a fine be levied hereafter upon lands so given, it shall be void in law." The intolerable mischief introduced by this statute was got rid of by the fictitious proceedings of common recoveries, which were abolished by 3 & 4 Wm. IV., c. 74, an act that has completely unfettered these estates.

DONOR, a giver, a bestower, one who gives lands to another in tail, &c.

DOOM, judicial sentence; judgment.

DOOMSDAY-BOOK. See DOMESDAY-BOOK.

DORMANT PARTNERS, those whose names are not known or do not appear as partners, but who nevertheless are silent partners, and partake of the profits, and thereby become partners, either absolutely to all intents and purposes, or at all events, in respect to third parties. Dormant partners, in strictness of language, mean those who are merely passive in the firm, whether known or unknown, in contradistinction to those who are active and conduct the business of the firm, as principals. Unknown partners are properly secret partners; but in common parlance they are usually designated by the appellation of dormant partners. They are held responsible as partners until retirement to third parties, although they may not be so chargeable *inter sese*. Story on Partnership, 95, 113, 155, 350; Gow on Partnership; Collyer on Partnership.

Dormiunt aliquando leges, nunquam moriuntur. 2 Inst. 161.—(The laws sometimes sleep, never die.)

DORTURE [contracted from *dormiture*], a dormitory; a place to sleep in.

Dos rationabilis vel legitima est cujuslibet mulieris de quocunque tenemento tertia pars omnium terrarum et tenementorum, quæ vir suus tenuit in dominico suo ut de feodo, &c. Co. Lit. 336.—(Reasonable or legitimate dower belongs to every woman of a third part of all the lands and tenements of which her husband was seised in his demesne, as of fee, &c.)

Dos de dote peti non debet. 4 Co. 122.—(Dower from dower ought not to be sought.)

DOSSALE, hangings of tapestry.

DOTAL, relating to the portion of a woman; constituting her portion; comprised in her portion.

DOTATION, the act of giving a dowry or portion; endowment in general.

NOTE ASSIGNANDA, a writ that lay for a widow, where it was found by office that the king's tenant seised of lands in fee, or fee-tail, at his death, and that he held of the king in chief, &c. F. N. B. 26. Reg. Orig. 297.

NOTE UNDE NIHIL HABET, a writ of dower that lies for the widow against the tenant, who bought land of her husband in his lifetime, whereof he was solely seised in fee-simple or fee-tail, and of which she is dowerable. F. N. B. 147.

Doti lex favet; præmium pudoris est, ideo par-

catar. Co. Lit. 31.—(The law favours dower; it is the reward of chastity, therefore is reserved.)

DOTIS ADMINISTRATIONE, admeasurement of dower, where the widow holds more than her share, &c.

DOUBLE AVAIL OF MARRIAGE, the double of the value of the vassal's wife's tocher, due to the superior, because he refused a wife equal to him when offered by the superior; but this is modified to three years' rent of the vassal's free estate. *Scotch Law.*

DOUBLE or TREBLE COSTS, the true mode of estimating the amount of *double* costs was, first to allow the prevailing party the single costs, including the expenses of witnesses, counsels' fees, &c, and then allow him one half of the amount of the single costs, without deducting counsels' fees, &c. *Treble* costs consisted of the single costs, half of the single costs, and half of that half. But these costs are now repealed by 5 & 6 V., c. 97, which enacts that the successful party shall be entitled only to full and reasonable costs, to be taxed by the proper officer, which taxation shall, as in ordinary cases, be subject to review.

DOUBLE, or TREBLE DAMAGES, they are given, in some cases, by particular statutes, but at common law the damages are always single. They are not reckoned in the same manner as double and treble costs were, but arithmetically.

DOUBLE INSURANCE, where a person, being fully insured by one policy, effects another on the same subject with some other insurers, the assured may recover the amount of his actual loss against either set of underwriters. But as an insurance is a contract of indemnity only, the law will not allow him to recover beyond that amount; and if he thus obtain full satisfaction upon either of his policies, the underwriters upon this are entitled to contribution from the underwriters upon the other. *Park on Insurance*, 422.

DOUBLE PLEADING, this is not allowed either in the declaration or subsequent pleadings. Its meaning with respect to the former, is, that the declaration must not, in support of a single demand, allege several distinct matters, by any one of which that demand is sufficiently supported. With respect to the subsequent pleadings, the meaning is, that none of them is to contain several distinct answers to that which preceded it; and the reason of the rule in each case, is, that such pleading tends to several issues in respect of a single claim.

The object of this rule being to enforce a single issue upon a single subject of claim, admitting of several issues, where the claims are distinct, the rule is accordingly carried no further than this in its application. The declaration, therefore, may, in support of several demands, allege as many distinct matters as are respectively applicable to each. So the plea, though it must not con-

tain several answers to the whole of the declaration, may nevertheless make distinct answers to such parts of it as relate to different matters of claim or complaint; the power, however, of alleging in a plea distinct matters, in answer to such parts of the declaration as relate to different claims, seems to be subject to this restriction,—that neither of the matters so alleged be such as would alone be a sufficient answer to the whole. So in the replication and other subsequent parts of the series, a severance of pleading may take place in respect of several subjects of claim or complaint.

A pleading will be double that contains several answers, whatever be the class or quality of the answer. Matter will suffice to make a pleading double though it be ill pleaded, but matter immaterial cannot operate to make a pleading double. No matter will operate to make a pleading double, that is pleaded only as necessary inducement to another allegation. No matters, however multifarious, will operate to make a pleading double, that together constitute but one connected proposition or entire point. *Step. Plead.* 285.

DOUBLE COMPLAINT, a grievance made known by any clerk or other to the archbishop of the province against an inferior ordinary, for delaying or refusing to do justice in some cause ecclesiastical, as to give sentence, institute a clerk, &c.; and seems to be termed a double quarrel, because it is most commonly made against both the Judge and him at whose suit justice is denied or delayed; the effect whereof is, that the archbishop taking notice of the delay, directs his letters, under his authentic seal, to all clerks of his province, commanding them to admonish the ordinary, within a certain number of days, to the justice required, or otherwise to appear before him or his official, and there allege the cause of his delay; and to signify to the ordinary that if he neither perform the thing enjoined, nor appear and show cause against it, he himself, in his court of audience, will forthwith proceed to do the justice that is due. *Cowell.*

DOUBLE RENT. By 11 Geo. II., c. 19, § 18, it is enacted, that in case any tenant or tenants shall give notice of his, her, or their intention to quit the premises, and shall not accordingly deliver up the possession thereof at the time in such notice contained, the said tenant or tenants, his, her, or their executors or administrators, shall, from thenceforward, pay to the landlord double the rent or sum which he, she, or they should otherwise have paid. A tenant who has given notice, and paid double rent, may quit without fresh notice. The acceptance of single rent, which has accrued due subsequently to the notice, is, it seems, a waiver of the landlord's right to double rent, although it does not necessarily imply that the tenancy should continue. The double rent is recoverable either by distress or action at law.

DOUBLE VALUE. By 4 Geo. II., c. 28, § 1, it is enacted, that if any tenant or tenants for life, or tenants for years, or persons coming in under or in collusion with them, hold over any lands, tenements, or hereditaments, after the determination of their estates, after demand made, and notice *in writing* given, for delivering the possession thereof, by the landlord, or the person having the reversion or remainder therein, or his agent thereunto, lawfully authorized, such tenant or tenants so holding over, shall pay to the person so kept out of possession, at the rate of *double the yearly value* of the lands, tenements, and hereditaments so detained, for so long a time as the same are detained; to be recovered by action of debt, against which recovery there shall be no relief in equity.

DOUBLE VOUCHER, when a recovery was had, and an estate of freehold was first conveyed to any indifferent person against whom the *præcipe* was brought, and then he vouched the tenant in tail, who vouched over the common vouchee. For if a recovery were had immediately against a tenant in tail, it barred only such estate in the premises of which he was then actually seised, whereas, if the recovery were had against another person, and the tenant in tail were vouchee, it barred every latent right and interest which he might have in the lands recovered. Recoveries are now abolished by 3 & 4 Wm. IV., c. 74.

DOUBLES, letters patent. *Cowell*.

DOUBTFUL SEX. The ancients have several fables founded on the idea of the union of the qualities of the male and female in the same individual. One of the personages who was supposed to be thus endowed was named Hermaphroditus, *i. e.*, *Mercurio Venus*, for *Ἑρμῆς* is Mercury, and *Ἀφροδίτη* is Venus. This Hermaphroditus, according to the classic fable, was the son of Mercury by his sister Venus. In those woods where he frequently hunted, a nymph called Salmacis lived, who greatly admired him; for he was very beautiful, but a great woman-hater. She often tempted the young man, but was often repulsed, yet she did not despair. She lay in ambush at a fountain where he usually came to bathe, and, when he was in the water, she also leaped in; but neither so could she overcome his extraordinary modesty. Thereupon, it is said, she prayed to the gods above, that the bodies of both might become one, which was granted. Hermaphroditus was amazed when he saw this change of his body; and desired that, for his comfort, some other person might be like him. He obtained his request; for whoever washed himself in that fountain (called Salmacis, in the country of Caria,) became an Hermaphrodite, that is, had both sexes. *Ovid's Metam.*, l. 4.

From this modest youth, then, came the term, as applicable to this class of beings. The researches of modern anatomists have completely set at rest the long-debated question of hermaphroditism, in the vulgar acceptance of the word. It is anatomically

and physiologically impossible. Yet is it equally well established that many cases of extraordinary mal-conformations have occurred, but they are either males, with some unusual organization or position of the urinary or generative organs; or females with an enlarged clitoris, or prolapsed uterus; or individuals in whom the generative organs have not produced their usual effect in influencing the development of the body. Thus it is evident that instead of combining the powers of both sexes, they are for the most part incapable of exerting any sexual function.

Yet the prejudices of ancient nations seem to have marked these unfortunate individuals as objects of persecution, and to have subjected them to the operation of the most absurd and cruel laws. Diodorus mentions that they had been burnt by the Athenians and Romans. At an early period of Roman history, a law was enacted that every child of this description should be shut up in a chest and thrown into the sea; and Livy gives an instance, where, on some difficulty with respect to the sex of a newly-born infant, it was directed to be thrown into the sea—*tanquam fœdum et turpe prodigium*. *Livy*, xxvii. 37; *Ætropolitanus*, iv. 36. The Jewish Talmud, we are told, contains many ordinances founded on the apparent predominance of sex. The canon and civil laws have also many enactments concerning them. An old French law allowed them great latitude. It enacted that they should choose one sex, and keep to it. The Hindoo Institutes of Menu provide for singular contingencies. *The Chinese*, by *Davis*, vol. i. p. 221. These absurd notions and practices have now disappeared; but the subject is important on many accounts, as these unusual deviations often render the sex of an individual doubtful, and impose even on professional men.

Our common law on this subject is thus laid down: a monster having deformity in any part of its body, yet if it have human shape, may inherit. And every heir is either a male, or a female, or an hermaphrodite, that is, both male and female. And an hermaphrodite, who is also called *androgynus*, shall be heir either as a male or female, according to that kind of sex which prevails, and accordingly it ought to be baptised. The same rule—*hermaphrodita tam masculo quam femine comparatum secundum prævalentiam sexus incalescentis*—guides in cases concerning tenants by the courtesy. 2 *Bl. Com.* 247.

M. St. Hilaire remarks that "legislation, admitting only two grand classes of individuals on whom it imposes duties, and grants different and almost opposite rights, according to their sex, does not truly embrace the entire of the cases; for there are subjects who have really no sex, such as neuter hermaphrodites, and hermaphrodites mixed by superposition; and on the other hand, certain individuals, the bisexual hermaphrodites, who present the two sexes united in

the same degree." *Lancet*, N. S., vol. xii. p. 48.

DOW [*do*, Lat.], to give or endow.

DOW-PURSE. A considerable sum of money was anciently put into a plate, and presented by the bridegroom to the bride on the wedding night as a sort of purchase of her person. *Old Scholiast*. This custom was not peculiar to Rome; it obtained among the Greeks (*δωρίον δέσπον*) likewise, as among the Jews, and is found among many eastern nations. It also prevailed under the name of *morgengabe*, or morning present, over a great part of the north of Europe, where some faint traces of it are still to be found; and something of the kind was customary in many parts of England, and perhaps is so still, under the name of *dow-purse*. *Stock. Jur.* 128.

DOWABLE, entitled to dower.

DOWAGER, a widow endowed.

DOWAGER QUEEN, the widow of a King, and as such enjoys most of the privileges belonging to her as Queen Consort. It is not high treason to conspire her death or violate her chastity, because the succession to the Crown is not thereby endangered. No man, however, can marry her without a special license from the Sovereign, on pain of forfeiting his lands or goods. 1 *Bl. Com.* 233.

DOWER [*dotarium*, Lat.], the right which a wife (not being an alien, unless she be naturalized or made a denizen) has in the third part of the lands and tenements of which her husband dies possessed in fee simple, fee tail general, or as heir in special tail, which she holds from and after his decease, in severalty by metes and bounds, for her life, whether she have issue by her husband or not, and of what age soever she may be at her husband's decease, provided she be past the age of nine years.

The circumstances necessary to create dower are, 1st. marriage, which must be duly celebrated between parties canonically qualified to enter into such a contract, in conformity to the maxim, *ubi nullum matrimonium, ibi nulla dos*. But if the marriage be dissolvable *à vinculo matrimonii*, and it be not annulled in the lifetime of the husband, the wife will be entitled to her dower. The fact of marriage is proved by the bishop's certificate. 2d. That the husband must be seized in law of the estate out of which the wife claims dower, if the marriage were solemnized on or before the 1st January, 1834, for seisin is since rendered unnecessary by the Dower Act, which shall be presently explained; and 3d, the wife's estate is consummated by her husband's death.

The original law of dower became among our ancestors, with the increase of alienation, highly inconvenient and obstructive of the free course of conveyances. The legislature, by the 27 *Hen. VIII.*, c. 10 (the Statute of Uses), set about a method of diminishing the evil by providing a jointure in lieu of dower. By effect of this statute no widow can claim

both jointure and dower. Jointure, in its strict acceptation, meant a joint estate, limited to both husband and wife; but it is now understood to be a sole estate, limited only to the wife. To a strict legal jointure these six things are requisite:—1. The provision for the wife must take effect in possession or profit immediately after the husband's death. 2. It must be for her own life at least, and not *pour autre vie*, or for any term of years, or for any smaller estate. But the widow will be bound by the acceptance of a precarious interest if she were adult at the time she agreed to the jointure. 3. It must be made to herself and no other in trust for her. 4. It must be made in satisfaction of the whole, and not of part of her dower. 5. It must be either expressed or averred to be in satisfaction of dower; and 6, it may be made either before or after marriage; if made *after* marriage, she may waive it, and claim her dower, unless it be provided by act of Parliament.

But this statutable bar was found highly inconvenient, and recourse was had to many ingenious devices to prevent or defeat dower, but they were all more or less imperfect, and at length gave way to the universal practice of taking a very artificial form of conveyance, which obtained the name of a conveyance to uses to bar dower. The land was, therefore, now conveyed to such uses as the owner should appoint, and, in default of appointment to him for life, and on the determination of his estate in his lifetime, to a trustee and his heirs for the life of the owner in trust for him, and on the determination of the estate of the trustee, to the owner and his heirs.

An equitable bar of dower was deemed sufficient as between vendor and purchaser; thus, if a wife contract before marriage to relinquish her dower, either in consideration of a substituted provision, or of marriage, which is valuable in itself, and the highest consideration known to the law.

"The general result is" as the Real Property Commissioners reported, "that the right to dower exists beneficially, in so few instances, that it is of little value considered as a provision for widows, and we believe it may be confidently asserted, that it is never calculated on as a provision by females who contract marriage, or their friends: yet there is so much of uncertainty in the modes by which dower is prevented, that the actual or possible existence of the right is a very frequent and serious impediment to the transfer of property, and the ascertaining in each case that it does not exist in the widows of any of the persons through whom the property has passed, or procuring the necessary acts to be done for preventing or barring it, where it does or may exist, or securing the future production of the evidence of its non-existence, are the causes of frequent and great delay and expence attending such transfers. Thus where there is no person who can

derive any benefit from the law of dower, that law exists often as a clog to the transfer of property, sometimes as a legal pretext for delaying the performance of a contract, and sometimes as the inevitable cause of, or a mischievous temptation to, litigation. Generally we conceive that the right to dower may be said to exist to the injury of proprietors and purchasers, and to a comparatively small extent for the benefit of widows, and to some extent also to their injury, in leading them into, or involving them in, litigation."

"The true principle (as we think) on which the law of dower was originally established, and on which it has a claim on grounds of justice and policy (without sacrificing the general convenience) to be supported, is, that it should be considered as that interest in an estate of inheritance which the law takes from the heir of a deceased proprietor for the support of his widow, whose claims, in natural justice and policy, appear to stand at least on an equal footing with the claims of the heir; it is so far analogous to the provision which a law established in more modern times, has made for the widow out of the husband's personal estate undisposed of by his will. By combining this principle with another of high and perhaps paramount importance, a principle which the law has carefully established almost to its fullest extent, viz., that a right of alienation should be inseparably incident to property of every description, we think that the law of dower may be put on a footing more beneficial on the whole to widows, and free from nearly all the present inconveniences and mischiefs."

This led the way to the passing of the Dower Act, the 3 & 4 Wm. IV., c. 105, which places every wife's hope of dower entirely at the mercy of her husband.

The first section is the glossary clause, and enacts, "that the words and expressions hereinafter mentioned, which, in their ordinary signification, have a more confined or a different meaning, shall, in this act, *except* where the nature of the provision or the context of the act shall exclude such construction, be interpreted as follows:—

"Land," to extend to manors, advowsons, messuages, and all other hereditaments, whether corporeal or incorporeal (except such as are not liable to dower), and to any share thereof.

Every word importing the singular number only, to extend and be applied to several persons or things, as well as one person or thing.

When a husband dies *beneficially* entitled to any land for an interest not dowerable at law, and such interest, *whether wholly equitable, or partly legal and partly equitable*, is an estate of inheritance in possession, or equal thereto (other than estate in joint-tenancy), his widow is entitled, *in equity*, to dower out of the same land (§ 1).

This section has abolished a great anomaly. Dower is considered as a mere *legal*

right, and did not attach unless the husband was, during the coverture, solely seised in possession of the legal inheritance, it was held, therefore, that equity ought not to create the right where it did not subsist at law, and that a wife was not dowerable of a trust estate. Yet a man might then, as now, be tenant by the courtesy of his deceased wife's trust estate; a seemingly partial diversity, for which, Lord Chancellor Talbot said, he could see no reason, but which, as he found it settled, he did not feel himself at liberty to correct (3 P. Wms. 234). This distinction is abolished, and dower is made to attach, in equity, upon the beneficial interest in possession of a sole owner of the inheritance, whether the ownership be exclusively equitable, or be in part composed of a legal estate enjoyed beneficially.

The widow cannot dower out of estates of joint-tenants, because of the right of survivorship.

When a husband shall have been entitled to a right of entry or action in any land, and his widow would be entitled to dower out of the same if he had recovered possession thereof; she may dower out of the same, although her husband have not recovered possession thereof, provided the dower be sued for or obtained within the period during which such right of entry or action might be enforced (§ 3), which period is now limited, by the 3 & 4 Wm. IV., c. 27, to twenty years.

Before this act a seisin was necessary, as we have seen, but a seisin in law was sufficient, i. e., where the inheritance in lands and hereditaments, of which a man died seised or possessed, descends upon his heir, who dies before entry or possession; if the heir had left a widow, she would have had dower.

No widow shall be entitled to dower out of any land which shall have been *absolutely disposed* of by her husband in his lifetime or by his will (§ 4). And that all *partial* estates and interests, and all charges created by any disposition or will of a husband, and all debts, incumbrances, contracts, and engagements to which his land shall be subject or liable, are valid and effectual as against the right of his widow to dower (§ 5). A widow shall not be entitled to dower out of any land of her husband when, in the deed by which it was conveyed to him, or by any deed executed by him, it shall be *declared* that his widow shall not be entitled to dower out of such land (§ 6). A widow shall not be entitled to dower out of any land of which her husband shall die wholly or partially intestate, *when*, by his will, he declares his intention that she shall not be entitled to dower out of such land, or out of any of his land (§ 7). The widow's right to dower shall be subject to any conditions, restrictions, or directions, which shall be declared by her husband's will (§ 8). Where a husband devises any land out of which his widow would be entitled to dower, if the same

were not so devised, or any estate or interest therein, to or for the benefit of his widow, she shall not be entitled to dower out of or in any land of her husband, unless a contrary intention appear by the will (§ 9).

In these sections consist the essential alterations made by this act, and puts the widow's dower altogether in the husband's power. It used to be a principle, that, after a title to dower had once attached, it was not in the power of the husband alone to defeat it by any act in the nature of alienation or charge, whether voluntarily, as by deed or will, or involuntarily, as by bankruptcy, &c.; and that, therefore, all interests created by the husband after the attachment of title to dower, were voidable as to that part of the land which was recovered in dower.

The fourteenth section enacts, "that this act shall not extend to the dower of any woman who shall have been, or shall be, married on or before the 1st January, 1834, and shall not give to any will, deed, contract, engagement, or charge executed, entered into, or created before the said 1st January, 1834, the effect of defeating or prejudicing any right to dower."

There is great obscurity in this section, and it gave rise to two serious questions. The one was, whether a title to dower was within the Fines and Recoveries' Act, so that a woman married on or before the 1st January, 1834, could extinguish her title by a deed acknowledged under the act? and it has been long settled that, in every case requiring the wife's conveyance, the substituted assurance, under the 3 & 4 Wm. IV., c. 74, applies. The other question was, whether the dower of a woman married on or before 1st January, 1834, out of lands purchased by the husband after that day, may be excluded by a declaration, alienation, &c., under the Dower Act? The sound opinion seems to be, that the new law was made *exclusively* for women married after the 1st January, 1834, and, therefore, inasmuch as the titles to dower, attaching after 1st January, 1834, of women married on or before that day, cannot be defeated by a declaration or otherwise, under this act; it follows, as a reasonable consequence, that such women cannot claim dower out of *equitable* estate under the second section of this act. This saving clause, which continues to a large class of wives the old provisions, will have the effect of prolonging the practice of inserting limitations to prevent dower, in order to render the fact of marriage on or before the 1st January, 1834, immaterial to the future title. In practice, the ordinary uses to prevent dower are inserted together with the declaration.

The tenth section enacts, that no gift or bequest made by any husband to or for the benefit of his widow, of or out of his *personal* estate, or of or out of any of his land *not liable to dower*, shall defeat or prejudice her right to dower, *unless* a contrary intention be declared by his will.

Acceptance of a bequest of personalty neither did, nor, since this act, does, operate in bar of dower, unless an intention to that effect can be unequivocally established. See *Ayres v. Wilson*, 1 Ves., sen. 230.

Nothing in this act prevents the Court of Equity enforcing any covenant or agreement, entered into by or on the part of the husband not to bar his widow's right to dower out of his lands, or any of them (§ 11); so that it should be ascertained by a purchaser of an estate free of dower, under this act, that the vendor has not entered into any agreement *not* to bar his widow's dower.

Also, that nothing in this act is to interfere with any rule of equity, or of any ecclesiastical court, by which legacies bequeathed to widows, in satisfaction of dower, are entitled to priority over other legacies (§ 12).

The principle alluded to in this clause is, that where a general legacy is given in consideration of a debt owing to the legatee, or of his relinquishing any right or interest, inasmuch as such a bequest cannot be treated as a bounty, like other bequests, but as the purchase money for such right or interest, payment of it will be preferred to any other general legacies, which are merely voluntary, and, therefore, a legacy given to a widow in satisfaction of dower, does not, in the event of a deficiency of assets, abate in proportion to the other legacies. This principle, however, only applies to cases where, on testator's death, his widow is entitled to dower.

No widow is now entitled to dower *ad ostium ecclesiæ*, or *ex assensu patris* (§ 13).

Dower, *ad ostium ecclesiæ*, was this:—where tenant in fee-simple of full age, openly, at the church door (where all marriages were formerly celebrated), after affiance made and troth plighted between them, endowed his wife with the whole, or such quantity of his land, as he pleased, specifying and ascertaining the same; on which the wife, after her husband's death, might have entered without further ceremony. Dower, *ex assensu patris*, was a species of dower *ad ostium ecclesiæ*, which was made during the husband's father's life, and the son, by the father's consent expressly given, endowed his wife with parcel of his father's lands.

The right to dower is consummated upon the husband's death, but the widow has no estate in the lands until the heir assigned the dower, unless the precise portion of land had been particularly specified. If the property be capable of division, and was held by the husband in severalty, dower must be assigned by metes and bounds; but if otherwise, it must be done in a special and certain manner. If the heir or terre-tenant refuse to assign the dower, the widow has several remedies for recovering it. Where no dower has been assigned, the writ of dower *unde nihil habet* will lie, but if any part have been assigned, the writ of dower will lie. The widow may file a bill in Chancery; for she labours under so many difficulties at law, from the embarrassment of trust terms and

other matters, that equity will fully assist her not only in establishing her right at law, but also in completely relieving, when such right is ascertained.

No arrears of dower, nor any damages on account thereof, are recoverable by action or suit, for more than six years next before the commencement of such action or suit, by 3 & 4 *Wm. IV.*, c. 27, § 40.

DOWL AND DEAL [*dal*, Brit., *divisio*, from *dælan*, Sax., whence *dealing*], a division.

DOWLE STONES, those dividing lands, &c. *Cowell*.

DOWRY [*dos mulieris*], otherwise called *maritagium*, or marriage goods, that which the wife brings the husband in marriage. This word should not be confounded with dower. *Co. Lit.* 31.

DOZEIN, a territory or jurisdiction. See **DECINERS**.

DOZEN PEERS, twelve peers assembled at the instance of the barons, in the reign of Henry III., to be privy counsellors, or rather conservators of the kingdom.

DRACO REGIS, the standard ensign or military colors borne in war by our ancient kings, having the figure of a dragon painted thereon. *Rog. Hoved.* 1191.

DRAFT, or **DRAUGHT**, a bill drawn by one person upon another for a sum of money; an order in writing to receive money; also a foul copy of a legal document, &c., to be settled previously to a fair copy being made for engrossment.

DRANA, or **DRECCA**, a drain or water-course.

DRAPERY [*pannaria*], used as a head in our old statute books, and extended to the making and manufacturing of all sorts of woollen clothes.

DRAWBACK, a term used in commerce to signify the remitting or paying back of the duties previously paid on a commodity on its being exported.

A drawback is a device resorted to for enabling a commodity affected by taxes to be exported and sold in the foreign market on the same terms as if it had not been taxed at all. It differs in this from a bounty, that the latter enables a commodity to be sold abroad for less than its natural cost, whereas a drawback enables it to be sold exactly at its natural cost. Drawbacks, as Dr. Smith has observed, "do not occasion the exportation of a greater quantity of goods than would have been exported had no duty been imposed. They do not tend to turn towards any particular employment a greater share of the capital of the country than would go to that employment of its own accord, but only to hinder the duty from driving away any part of that share to other employments. They tend not to overturn that balance which naturally establishes itself among all the various employments of the society; but to hinder it from being overturned by the duty. They tend not to destroy, but to preserve, what it is in most cases advantageous to preserve—the natural

division and distribution of labour in the society." Were it not for the system of drawbacks, it would be impossible, unless when a country enjoyed some very peculiar facilities of production, to export any commodity that was more heavily taxed at home than abroad. But the drawback obviates this difficulty, and enables merchants to export commodities loaded at home with heavy duties, and to sell them in the foreign market on the same terms as those fetched from countries where they are not taxed.

Most foreign articles exported into this country may be warehoused for subsequent exportation. In this case they pay no duties on being imported; and, of course, get no drawback on their subsequent exportation.

Sometimes a drawback exceeds the duty or duties laid on the article; and in such cases the excess forms a real bounty of that amount, and should be so considered.

It is enacted by 3 & 4 *Will. IV.*, c. 52, that no drawback or bounty shall be allowed upon the exportation from the United Kingdom of any goods, unless such goods shall have been entered in the name of the person who was the real owner thereof at the time of entry and shipping, or of the person who had actually purchased and shipped the same, in his own name and at his own liability and risk, on commission, according to the practice of merchants, and who was and shall have continued to be entitled in his own right to such drawback or bounty except in the cases therein-after provided for (§ 86).

No drawback shall be allowed upon the exportation of any goods, unless such goods be shipped within three years after the payment of the duties inwards thereon. And no debenture for any drawback or bounty upon the exportation of any goods, shall be paid after the expiration of two years from the shipment of such goods; and no drawback shall be allowed upon any goods which, by reason of damage or decay, shall have become of less value for home use than the amount of such drawback; and all goods so damaged, which shall be cleared for drawback, shall be forfeited; and the person who caused such goods to be so cleared, shall forfeit 200*l.*, or treble the amount of the drawback, at the option of the commissioners of customs (§ 90.)

No drawback or bounty shall be allowed upon goods exported and cleared as being presspacked, unless the quantities and the qualities of the same be verified by oath of the master packer thereof, or, in case of his unavoidable absence, by oath of his foreman (§ 93).

No goods cleared for drawback or bounty, or from any warehouse, shall be carried to be put on board ship for exportation, except by a person authorized for that purpose by licence of the commissioners of customs (§ 94).

DRAW-LATCHES, thieves, robbers, wasters, and roberdsmen. 5 *Edw. III.*, c. 14; 7 *Ric. II.*, c. 5.

DRAWEE, the person on whom a bill of exchange is drawn, who is called, after acceptance, the acceptor.

DRAWER, the person making a bill of exchange and addressing it to the drawee.

All persons of age, and of sound mind and understanding (or *compotes mentis*), females as well as males, alien friends, trustees, agents, guardians, executors and administrators, and other persons acting *en autre droit*, partners, acting within the scope of the business of the partnership, and corporations, acting through the instrumentality of an agent, for purposes and objects authorized by, and within the scope of their charters, and *à fortiori*, if express authority is given to them, may become drawers or other parties to bills of exchange.

DRENCHES, or **DRENGES**, tenants *in capite*. They are said to be such as, at the coming of William the Conqueror, being put out of their estates, were afterwards restored to them, on their making it appear that they were the true owners thereof, and neither in *auxilio* or *consilio* against him. *Spelm.*

DRENGAGE, the tenure by which the drenches or drenges held their lands.

DRIFT OF THE FOREST [*agitatio animalium in foresta*], a view or examination of what cattle are in a forest, chase, &c., that it may be known whether it be surcharged or not; and whose the beasts are, and whether they are commonable. These drifts are made at certain times in the year by the officers of the forest; when all cattle are driven into some pound or place enclosed, for the before mentioned purposes, and also to discover whether any cattle of strangers be there, which ought not to common. *Man. p. 2, c. 15.*

DRIFT-LAND, **DROFLAND**, or **DRYFLAND**, a yearly rent paid by some tenants for driving cattle through a manor. *Encyc. Lond.*

DRINCE-LEAN, a contribution of tenants in the time of the Saxons towards a potation or ale, provided to entertain the lord or his steward.

DROFDENN, a grove or woody place where cattle were kept.

DROIT [Fr.], right, justice, equity. There were many writs of *droit* or right used in our law, but they were all abolished by 3 & 4 Wm. IV., c. 27, except a writ of dower, or writ of dower *unde nihil habet*.

DROIT D'AUBAINE [*jus albinatus*, i. e., *alibi natus*, born elsewhere], in French law, a right of the king entitling him, at the death of an alien, to all he was worth, unless he had a peculiar exemption. *Spelm.*

DROIT-DROIT, or **JUS DUPLICATUM**, a double right, i. e., the right of possession joined with the right of property, which makes a complete title to lands, tenements, and hereditaments. And when to this double right the actual possession is also united, when there is, according to the expression in Fleta, *juris et seisinæ conjunctio*, then, and then only, is the title to property completely legal. 2 *Bl. Com.* 199.

Droit ne done plus que soit demande. 2 Inst. 286.—(The law gives no more than is demanded.)

Droit ne poet pas morier. Jenk. Cent. 100.—(Right cannot die.)

DROMOES, **DROMOS**, **DROMUNDA**, ships of great burden; men-of-war. *Walsing.* 1292.

DROVERS, those that buy cattle in one place to sell in another. *Willes*, 590.

DRU, a thicket or wood. *Domesday Book.*

DRUNKENNESS, intoxication with strong liquor; habitual ebriety. It is an offence against the public economy, and punishable by statutes 4 Jac. I., c. 5, and 21 Jac. I., c. 7, §§ 1, 3, with the forfeiture of 5s., to be paid within one week after conviction, to the churchwardens for the use of the poor; and upon a second conviction, the offender shall be bound with two sureties in 10l. for his good behaviour. It is also punishable by the ecclesiastical courts.

"A drunkard," says Sir Edward Coke (1 Inst. 247), "who is *voluntarius daemon*, has no privilege thereby; but what hurt or ill soever he doth, his drunkenness doth aggravate it: *nam crimen ebrietas, et incendit, et delegit.*"

The Scotch law is thus explained by Mr. Alison: drunkenness is no excuse for crimes; "but, on the other hand, if either the insanity has supervened from drinking, without the panel's having been aware that such an indulgence in his case leads to such a consequence; or if it have arisen from the combination of drinking with a half crazy or infirm state of mind, or a previous wound or illness, which rendered spirits fatal to his intellect, to a degree unusual in other men, or which could not have been anticipated, it seems inhuman to visit him with the extreme punishment which was suitable in the other case. In such a case the proper course is to convict; but in consideration of the degree of infirmity proved, recommend to the royal mercy." *Prim. Crim. Law of Scot.* 654.

Drunkenness sometimes causes a short access of delirium or mania, to which the name of *delirium tremens*, or *mania à potu*, is given. This state may continue some days or even weeks. It differs from drunkenness, in that the latter disappears in twelve or fifteen hours at most, if not renewed by drink. Certainly the individual seized with this delirium is not responsible for his actions; and if he is to be punished for the immorality of the cause of his reprehensible act, a large number of the insane must also be included in a similar infliction. *Orfila's Leçons*, 2d edit., vol. ii. p. 127.

The late Mr. Justice Story (*Mason's Rep.* vol. v. p. 28), said, "the question made at the bar is, whether insanity, whose remote cause is habitual drunkenness, is, or is not, an excuse in a court of law for a homicide committed by the party while so insane, but not at the time intoxicated, or under the influence of liquor. We are clearly of opi-

nion that insanity is a competent excuse in such a crime. In general, insanity is an excuse for the commission of every crime, because the party has not the possession of that reason which includes responsibility. An exception is when the crime is committed by a party while in a fit of intoxication, the law not permitting a man to avail himself of the excuse of his own gross vice and misconduct to shelter himself from the legal consequences of such crime. But the crime must take place, and be the *immediate* result of the fit of intoxication, and *while it lasts*, and not, as in this case, a remote consequence, superinduced by the antecedent exhaustion of the party, resulting from gross and habitual drunkenness. However criminal in a moral point of view such an indulgence is, and however justly a party may be responsible for his acts arising from it to Almighty God, human tribunals are generally restricted from punishing them, since they are not the acts of a reasonable being. Many species of insanity arise remotely from what, in a moral view, is a criminal neglect or fault of the party; as from religious melancholy, undue exposure, extravagant pride, ambition, &c. Yet such insanity has always been deemed a sufficient excuse for any crime done under its influence."

DRY-CRÆFT, witchcraft; magic. Celt. *dravi*, magician; *draoidheadh*, magic: hence also druid. *Anc. Inst. Eng.*

DRY EXCHANGE [*cambium siccum*], a term invented in former times for the disguising and covering of usury; in which something was intended to pass on both sides, whereas nothing passed but on one side, in which respect it was called dry: punished by 3 Hen. VII., c. 5.

DRY-MULTURES, quantities of corn paid to a mill, whether the payers grind or not. *Scotch Term.*

DRY-RENT, a rent reserved without clause of distress. See **RENT-SUCK**.

DUARCHY [δύα and ἀρχή, Gk.], a form of government where two rule jointly.

DUCES TECUM (you shall bring with you), *subpoena*. If a person who is not a party to a cause, or a defendant who has suffered judgment by default have in his possession any written instrument, &c., which would be evidence for you at the trial, instead of the common subpoena, serve him with a subpoena *duces tecum*, commanding him to bring it with him and produce it at the trial. Upon being served with a copy of this subpoena, he must attend at the trial with the instrument required, and produce it in evidence, unless he have some lawful or reasonable excuse for withholding it, of the validity of which excuse the court, and not the witness, is to judge. It is no excuse that the legal custody of the instrument belongs to another, if it be in the actual possession of the witness; but if it tend to criminate himself or his client (if the witness be an attorney), or if it be his title-deed, the court will not compel him to produce it. Where these

objections do not apply, it seems that the writings in a man's possession are as much liable to the calls of justice as are the faculties of speech and memory. There can be no difference in principle between obliging a man to state his knowledge of a fact, and compelling him to produce a written entry in his possession which proves the same fact. Not only a man's estate, but even his liberty or life, may depend upon written evidence, which is the exclusive property of a stranger.

If the witness, instead of bringing the papers, &c., required, deliver them to the opposite party, by whom they are withheld, the court will allow secondary evidence of the contents of them to be given, without a notice to produce the originals. A witness, producing papers under a subpoena *duces tecum*, needs not be sworn unless he be examined. *Chit. Arch. Prac.* 233.

DUCES TECUM LICET LANGUIDUS, a writ directed to the sheriff upon a return that he cannot bring his prisoner without danger of death, he being *adeo languidus*; then the court grants a *habeas corpus* in the nature of a *duces tecum licet languidus*. But this is now out of use; and where the person's life would be endangered by removal, the law will not permit it to be done.

DUCHY COURT OF LANCASTER, a tribunal of special jurisdiction, held before the chancellor of the duchy, or his deputy, concerning all matter of equity relating to lands holden of the Crown in right of the duchy of Lancaster; which is a thing very distinct from the county palatine (that has also its separate chancery, for sealing of writs, and the like), and comprises much territory which lies at a vast distance from it; as particularly a very large district surrounded by the city of Westminster. The proceedings in this court are the same as on the equity side of the Court of Chancery, so that it seems not to be a court of record; and, indeed, it has been holden that the Court of Chancery has a concurrent jurisdiction with the duchy court, and may take cognizance of the same causes. *3 Bl. Com.* 78.

DUCKING-STOOL. See **CASTIGATORY**.

DUE [*due*, Fr.], the participle passive of owe; owed. That which one contracts to pay or perform to another; that which law or justice requires to be paid or done. Also, that which office, rank, station, or established rules of right or decorum require to be given or performed.

It should be observed that a debt is said to be *due* the instant that it has existence as a debt; it may be *payable* at a future time.

DUEL, in our ancient law, a legal fight between persons in a doubtful case for the trial of the truth, long since disused; and what we now call a duel is a fighting between two upon some quarrel precedent; wherein, if a person is killed, both the principal and his seconds are guilty of murder, whether the seconds fight or not. *Hawk. Pl.* 47. An unpremeditated sudden fight is a *rencontre*.

DUES, certain payments ; rates or taxes.

DUKES [*dux*, Lat.], the highest title of honour next to the Prince of Wales. His consort is called a dutchess. It is a mere title of dignity, without giving any domain, territory, or jurisdiction over the place whence the title is taken.

It was originally a Roman dignity, denominated *ducendo*, leading or commanding. Accordingly the first dukes (*duces*) were the *ductores exercituum*, commanders of armies. Under the emperors, the governors of provinces in war time, were styled *duces*. In aftertimes the same denomination was also given to the governors of provinces in time of peace. *Encyc. Lond.* In Genesis we read of dukes, but they were heads of families.

DULOCRACY [*δουλος*, Gk., a servant, and *κράτος*, power], a government where servants and slaves have so much licence and privilege, that they domineer.

DUM BENE SE GESSERIT (while he should conduct himself well).

DUM FUIT INFRA ÆTATEM (while he was within age), an abolished writ whereby one who had made a feoffment of his lands while an infant, when he came of full age, might recover those lands and tenements which were so aliened, and, within age, he might enter into the land, and take it back again, and by his entry he should be remitted to his ancestor's right. *F. N. B.* 192.

DUM FUIT IN PRISONA (while he was in prison), an abolished writ of entry that lay to restore a man to his lands who had aliened them under duress of imprisonment. *2 Inst.* 482.

DUM NON FUIT COMPOS MENTIS (while he was not of sound mind), an abolished writ that lay when a man, not of sound mind, aliened any lands or tenements against the silence. *F. N. B.* 449.

DUN, a mountain or high open place ; also an importunate creditor.

DUNA, a bank of earth thrown out of a ditch. *Old Records.*

DUNGEON [from *donjon*, the tower in which prisoners are kept, whence all prisons eminently strong, were called dungeons], a close prison, dark or subterraneous.

DUNIO, a double, a sort of base coin less than a farthing. *Old Records.*

DUNSETS, a people that dwell on hilly places. *Old Records.*

DUNUM, or DUNA [*dunnarium*], a down or hill.

Duo non possunt in solido unam rem possidere. Co. Lit. 368.—(Two cannot possess one thing in entirety.)

Duo sunt instrumenta ad omnes res aut confirmandas aut impugnandas,—ratio et auctoritas. 8 Co. 16.—(There are two instruments either to confirm or impugn all things—reason and authority.)

DUODENA, a jury of twelve men.

DUODENA MANU, twelve witnesses to purge a criminal of an offence.

DUPLEX QUERELA (a double plaint), a

process ecclesiastical, which is in the nature of an appeal from the ordinary to his next immediate superior, as from a bishop to the archbishop ; and if the superior court adjudge the cause of refusal to be insufficient, it will grant institution to the appellant. *1 Burn*, 160.

DUPLICATE, second letters-patent, granted by the Lord Chancellor, in a case wherein he had before done the same, which were void ; also a copy or transcript of any document, deed, writing, or account, or a second letter, written and sent to the same party and purpose as a former, or a copy of dispatches, for fear of a miscarriage of the first, or for other reasons.

DUPLICATIO, the Roman pleading answering to our rejoinder.

Duplicationem possibilitatis lex non patitur. *1 R. R.* 321.—(The law does not allow a duplication of possibility.)

DUPPLICITY. See DOUBLE PLEADING.

It is a general rule in equity, that a plea ought not to contain more defences than one, and that a double plea is informal and multifarious, and therefore improper. For if two matters of defence may be thus offered, the same reason will justify the making of any number of defences in the same way, by which the ends intended by a plea would not be obtained, and the court would be compelled to give instant judgment upon a variety of defences, with all their circumstances, all alleged by the plea, before they are made out in proof ; and, consequently, would decide upon a complicated case, which might not exist. It may then be laid down as a rule, that various facts can never be pleaded in one plea, unless they are all conducive to a single point, on which the defendant means to rest his defence ; for, otherwise, it may be demurred to for duplicity and multifariousness.

The reasoning, as to duplicity in a plea, does not, perhaps, in its full extent, apply with equal force to the case of two several bars, pleaded as several pleas, though to the same matter ; and it may be said that such pleading is admitted at law, and ought, therefore, to be equally so in equity. But it should be considered that a plea is not the only mode of defence in equity ; and that, therefore, there is not the same necessity, as at law, for admitting this kind of pleading. But, although the ordinary course of practice in courts of equity does not admit of several pleas ; yet, where great inconvenience might otherwise be sustained in a particular case, the court will sometimes, in its discretion, allow several pleas. *Story's Eq. Plead.* 498.

DURANTE, during ; as *durante bene placito*, during pleasure ; *durante minore ætate*, during minority ; *durante vita*, during life ; *durante viduitate*, during widowhood.

DURDEN, a copse ; a thicket in a valley.

DURESS [*duresse*, Fr., *durities*, Lat., constraint], imprisonment, compulsion.

Duress is either by imprisonment or by threats. In order to constitute duress by

imprisonment, either the imprisonment or the duress consequent upon it must be tortious and unlawful. Duress by threat has been thus divided:—through fear (1) of loss of life; (2) of loss of member; (3) of maim; (4) of imprisonment.

By the common law, a contract made during duress is not void, but voidable; and the party upon whom it is practised may avail himself of the duress, as a special defence to an action thereupon at any time. But the party who has employed the force, cannot allege it as a defence, if the contract be insisted upon by the other side.

The constant rule in equity is, that where a party is not a free agent, and is not equal to protecting himself, the court will protect him. The maxim of the common law is,—*Quod alias bonum et justum est, si per vim vel fraudem petatur, malum et injustum efficitur.*—(What otherwise is good and just, if sought by force or fraud, becomes bad and unjust.) On this account, courts of equity watch with extreme jealousy all contracts made by a party while under imprisonment; and if there is the slightest ground to suspect oppression or imposition in such cases, they will set the contract aside. Circumstances also of extreme necessity and distress of the party, although not accompanied by any direct restraint or duress, may, in like manner, so entirely overcome his free agency, as to justify the court in setting aside a contract made by him on account of some oppression or fraudulent advantage, or imposition, attendant upon it. *Story's Comm. Eq. Jurisp.*, vol. i., p. 201.

Duress by threat (*per minas*) is also an excuse for some crimes, though not all, for although a man be violently assaulted and has no other possible means of escaping death but by killing an innocent person, this fear or force shall not acquit him of murder; for he ought rather to die himself than escape by the murder of an innocent. But in such a case he is permitted to kill the assailant; for there the law of nature and self-defence, its primary canon, have made him his own protector. It is to be observed too, that the compulsion which takes away guilt, must be the fear of no less than present death, or grievous bodily harm; for the mere apprehension of having houses burned, or goods spoiled, is not sufficient. 4 *Step. Com.* 83.

DURHAM, *county palatine of*. This jurisdiction which was vested, until a very recent period, in the Bishop of Durham, for the time being, is now taken from him by 6 & 7 Wm. IV., c. 19, and vested as a separate franchise and royalty in the Crown.

DURSLEY, blows without wounding or bloodshed; dry blows. *Blount*.

DUSTUCK [Indian], a term used in Hindoostan for a passport, permit, or order, in the English East India Company's affairs. It generally means the permit under their seal, which exempts goods from the payment of duties. *Encyc. Lond.*

DUSTY-FOOT. See **PIEPOUDRE**.

DWINED, dwindled; consumed.

DYING DECLARATIONS. See **DEATH-BED DECLARATIONS**.

DYKE-REED, or **DYKE-REVE**, an officer who has the care and oversight of the *dykes* and *drains* in fenny countries.

DYNASTY [*δυναστεία*, Gk., power], a race or succession of kings of the same line or family. Such were the dynasties of Egypt, China, &c.

DYSNOMY [*δύσ*, Gk., and *νόμος*, law], the act of constituting bad laws.

DYVOUR, (otherwise *Bare-man*), a Scotch term for a person involved in debt, and unable to pay his creditors; synonymous to the word *bankrupt*.

E

EA [Sax.], the water or river; also the mouth of a river on the shore between the high and low watermark.

Eadem causa diversis rationibus coram iudicibus ecclesiasticis et secularibus ventilatur. 2 Inst. 622.—(The same cause is determined by different principles before ecclesiastical and secular Judges.)

Eadem mens præsumitur regis quæ est juris et quæ esse debet, præsertim in dubiis. Hob. 154.—(The mind of the sovereign is presumed to be coincident with that of the law, and with that which it ought to be, especially in ambiguous matters.)

Ea est accipienda interpretatio quæ vitio caret. Bac.—(That interpretation which is free from fault is to be received.)

Ea quæ in curiâ nostrâ ritè acta sunt debite executioni demandari debent. Co. Lit. 289.—(Those things which are properly transacted in our court, ought to be committed to an appointed execution.)

EALDER, or **EALDING**, an elder or chief. See **ADRLING**.

EALDERMAN, the name of a Saxon magistrate; alderman. It was among the Saxons as much as *earl* among the Danes; and *senator* among the Romans. See **ALDERMAN**.

EALEHUS [*eale*, Sax., ale and *hus*, house], an alehouse.

EALHORDA [Sax.], the privilege of assizing and selling beer. *Obsolete*.

EADORBURG [Sax.], the metropolis; the chief city. *Obsolete*.

EARL [*eorl*, Sax., *coryl*, Erse, comes, Lat.], a title of nobility, formerly the highest in this nation, now the third, ranking between a marquis and a viscount. The title originated with the Saxons, and is the most ancient of the English peerage. William the Conqueror first made this title hereditary, giving it in fee to his nobles; and allotting them for the support of their state the third penny out of the sheriff's court, issuing out of all pleas of the shire, whence they had their ancient title, *shiremen*. At present the title is accompanied by no territory, private or judicial rights, but merely confers nobility and an hereditary seat in the House of Lords. In

official instruments they are called by the sovereign, "trusty and well-beloved cousins," an appellation as ancient as the reign of Henry IV. For some time after the Norman conquest they were called *counts*, and their wives are still called *countesses*. *Encyc. Lond.*; 1 *Bl. Com.* 398.

EARL MARSHAL OF ENGLAND, a great officer who had anciently several courts under his jurisdiction, as the court of chivalry, and the court of honour. Under him is also the herald's office, or college of arms. He has some pre-eminence in the Marshalsea Court, where he may sit in judgment against those who offend within the verge of the sovereign's court. This office is of great antiquity, and has been for several ages hereditary in the family of the Howards. *Ibid.*

EARLDOM, the seignior of an earl; the title and dignity of an earl.

EARNEST [*earnest*, Sax.], the sum advanced by the buyer of goods in order to bind the seller to the terms of the agreement. It is enacted by the 17th section of the Statute of Frauds, 29 Cha. II., c. 3, that "no contract for the sale of any goods, wares, and merchandizes, for the price of 10*l.* sterling, or upwards, shall be allowed to be good, except the buyer shall accept part of the goods so sold, and actually receive the same, or give something in *earnest* to bind the bargain, or in part payment, or that some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by such contract, or their agents thereunto lawfully authorised."

As to what amounts to sufficient earnest, Blackstone lays it down, that "if any part of the price is paid down, if it is but a penny, or any portion of the goods is delivered by way of earnest, it is binding." To constitute earnest, the thing must be given as a token of ratification of the contract, and it should be expressly stated so by the giver. *Chit. Comm. Law*, v. iii., p. 289.

EAR-WITNESS, one who attests or can attest anything as heard by himself.

EASEMENT, a service or convenience which one neighbour has of another, by charter or prescription, without profit; as a way through his land, a watercourse, a washing place, and such like. *Kitch.* 105. A multitude of persons cannot *prescribe* for an easement, but for this they may plead *custom*. *Cro. Ja.* 170.

EAST INDIA COMPANY, a famous association, originally established for prosecuting the trade between England and India, which they acquired a right to carry on exclusively. Since the middle of the last century, however, the company's political have become of more importance than their commercial concerns.

East Indies is a popular geographical term not very well defined, but generally understood to signify the continents and islands to the east and south of the river Indus, as far as the borders of China, including Timor

and the Moluccas, but excluding the Philippine Islands, New Guinea, and New Holland. China and the Philippine Islands were, however, included within the limits of the East India Company's peculiar privileges.

The 3 & 4 Will. IV., c. 85, for continuing the charter till 1854, terminated the company's commercial character, by enacting, that the company's trade to China was to cease on the 22d of April, 1834, and that the company was, as soon as possible after that date, to dispose of their stocks on hand, and close their commercial business.

Under the present act, the functions of the East India Company are wholly political. She is to continue to govern India, with the concurrence and under the supervision of the board of control, nearly on the plan laid down in Mr. Pitt's act, till the 30th of April, 1854. All the real and personal property belonging to the company on the 22d of April, 1834, was vested in the crown, and is held or managed by the company in trust for the same, subject of course to all claims, debts, contracts, &c., already in existence, or that may hereafter be brought into existence by competent authority. The company's debts and liabilities are all charged on India. The dividend, which is 10½ per cent., is paid in England out of the revenue of India; and provision is made for the establishment of a security fund for its discharge. The dividend may be redeemed by parliament, on payment of 200*l.* for 100*l.* stock, any time after April, 1874; but it is provided, in the event of the company being deprived of the government of India in 1854, that they may claim redemption of the dividend any time thereafter upon three years' notice.

Company's Stock forms a capital of six million pounds, into which all persons, natives or foreigners, males or females, bodies politic or corporate (the Governor and Company of the Bank of England only excepted), are at liberty to purchase, without limitation of amount.

Since 1793 the dividends have been 10½ per cent., to which they are limited by the late act.

General Courts.—The proprietors, in general court assembled, are empowered to enact bye-laws, and in other respects are competent to the complete investigation, regulation, and control of every branch of the company's concerns; but, for the more prompt despatch of business, the executive detail is vested in a court of directors. A general court is required to be held once in the months of March, June, September, and December, in each year. No one can be present at a general court unless possessed of 500*l.* stock; nor can any person vote upon the determination of any question, who has not been in possession of 1000*l.* stock for the preceding twelve months, unless such stock have been obtained by bequest or marriage. Persons possessed of 1000*l.* stock are empowered to give a single vote; 3000*l.*

are a qualification for two votes ; 6000*l.* for three votes ; and 10,000*l.* and upwards for four votes. There were 2003 proprietors on the company's books in 1825 ; of these 1494 were qualified to give single votes ; 392 two votes ; 69 three votes ; and 48 four votes. Upon any special occasion, nine proprietors, duly qualified by the possession of 1000*l.* stock, may, by a requisition in writing to the court of directors, call a general court, which the directors are required to summon within ten days ; or, in default, the proprietors may call such court by notice affixed upon the Royal Exchange. In all such courts the questions are decided by a majority of voices ; in case of an equality, the determination must be by the treasurer drawing a lot. Nine proprietors may, by a requisition in writing, demand a ballot upon any question, which shall not be taken within twenty-four hours after the breaking up of the general court.

Court of Directors.—The court of directors is composed of twenty-four members, chosen from among the proprietors, each of whom must be possessed of 2000*l.* stock ; nor can any director, after being chosen, act longer than while he continues to hold stock.

Of these, six are chosen on the second Wednesday in April in each year, to serve for four years, in the room of six who have completed such service.

After an interval of twelve months, those who had gone out by rotation are eligible to be re-elected for the ensuing four years. Formerly, no person who had been in the company's civil or military service in India was eligible to be elected a director, until he had been a resident in England two years after quitting the service ; but this condition no longer exists ; and all civil or military servants of the company in India, supposing they are otherwise eligible, may be chosen directors immediately on their return to England, provided they have no unsettled accounts with the company ; if so, they are ineligible for two years after their return, unless their accounts be sooner settled. 3 & 4 Wm. IV., c. 85, § 28. The directors choose annually, from amongst themselves, a chairman and a deputy chairman. They are required by bye-laws to meet once in every week, at least ; but they frequently meet oftener, as occasion requires. Not less than thirteen can form a court. Their determinations are guided by a majority : in case of an equality, the question must be decided by the drawing of a lot by the treasurer ; upon all questions of importance, the sense of the court is taken by ballot. The company's officers, both at home and abroad, receive their appointments immediately from the court, to whom they are responsible for the due and faithful discharge of the trust reposed in them. The patronage is, nevertheless, so arranged as that each member of the court separately participates therein.

Secret Committee.—The principal powers of the court of directors are vested in a secret committee, forming a sort of cabinet or privy council. All communications of a confidential or delicate nature between the board of control and the company are submitted, in the first instance, at least, to the consideration of this committee ; and the directions of the board, as to political affairs, may be transmitted direct to India, through the committee, without being seen by the other directors. The secret committee is appointed by the court of directors, and its members are sworn to secrecy.

The existing regulations, as to the residence of Englishmen in India, are embodied in the 3 & 4 Wm. IV., c. 85, and are as follow :—

Authority for her Majesty's subjects to reside in certain parts of India.—It shall be lawful for any natural-born subject of her Majesty to proceed by sea to any port or place, having a custom-house establishment within the same, and to reside thereat, or to proceed to, reside in, or pass through any part of such of the said territories as were under the government of the said company on the 1st day of January, 1800, and in any part of the countries ceded by the Nabob of the Carnatic, of the province of Cuttack, and of the settlements of Singapore and Malacca, without any license whatever ; provided that all subjects of her Majesty, not natives of the said territories, shall, on their arrival in any part of the same, from any port or place not within the said territories, make known in writing their names, places of destination, and objects of pursuit in India, to the chief officer of the customs, or other officer authorized for that purpose, at such place as aforesaid (§ 81).

Subjects of her Majesty not to reside in certain parts of India without licence.—It shall not be lawful for any subject of her Majesty, except the servants of the said company, and others now lawfully authorised to reside in the said territories, to enter the same by land, or to proceed to or reside in such parts of the said territories as are not hereinbefore in that behalf mentioned, without licence first obtained from the commissioners of the board of control, or the court of directors, or the governor-general, or a governor of any of the said presidencies : provided, that no licence given to any natural-born subject of her Majesty to reside in parts of the territories not open to all such subjects shall be determined or revoked unless in accordance with the terms of some express clause of revocation or determination in such licence contained (§ 82).

The governor-general, with previous consent of directors, may declare other places open.—It shall be lawful for the governor-general in council, with the previous consent and approbation of the said court of directors, to declare any place or places whatever within the said territories open to all her Majesty's natural-born subjects, and it shall

be thenceforth lawful for any of her Majesty's natural-born subjects to proceed to or reside in or pass through any place or places declared open, without any licence whatever (§ 83.)

Laws against illicit residence to be made.—The governor-general shall and is required to make laws or regulations providing for the prevention or punishment of the illicit entrance into or residence in the said territories of persons not authorised to enter or reside therein (§ 84).

Laws and regulations to be made for protection of natives.—And whereas the removal of restrictions on the intercourse of Europeans with the said territories will render it necessary to provide against any mischiefs or dangers that may arise therefrom, it is enacted, that the governor-general shall and is required, by laws or regulations, to provide with all convenient speed for the protection of the natives of the said territories from insult and outrage in their persons, religions, or opinions (§ 85).

Lands within the Indian territories may be purchased.—It shall be lawful for any natural-born subject of her Majesty authorised to reside in the said territories to acquire and hold lands, or any right, interest, or profit in or out of lands, for any term of years, in such part or parts of the said territories as he shall be so authorised to reside in: provided always, that nothing herein contained shall be taken to prevent the governor-general in council from enabling, by any laws or regulations, or otherwise, any subjects of her Majesty to acquire or hold any lands or rights, interests, or profits in or out of lands, in any part of the said territories, and for any estates or terms whatever (§ 86).

No disabilities in respect of religion, colour, or place of birth.—No native of the said territories, nor any natural-born subject of her Majesty resident therein, shall, by reason only of his religion, place of birth, descent, colour, or any of them, be disabled from holding any place, office, or employment under the said company (§ 87). *McCulloch's Comm. Dict.*

EASTER [*Ostern*, Ger., supposed to be derived from the name of the Teutonic goddess *Ostera*, celebrated by the ancient Saxons early in the spring], a feast of the church held in memory of our Saviour's resurrection. The Greeks and Latins call it *pascha*, *passover*, to which Jewish feast our Easter answers,

This feast has been annually celebrated ever since the time of the apostles, and is one of the most considerable festivals in the Christian calendar, being that which regulates and determines the times of all the other moveable feasts. The rule for the celebration of Easter, fixed by the council of Nice, in the year 325, is, that it be held on the Sunday which falls upon or next after the full moon which happens next after the 21st March, that is, the Sunday which falls upon or next after the first full moon after

the vernal equinox, and as such it stands in the rubric of the church of England. And if the full moon that comes next after the 21st March fall upon a Sunday, Easter shall not be that Sunday, but the one after it. The reason of this decree was, that the Christians might avoid celebrating their Easter at the same time with the Jewish passover, which, according to the institution of Moses, was held the very day of the full moon.

An astronomical Easter is impossible, unless the festival be sometimes kept on one day on the east of a variable meridian, and on another day on the west; the difference being a week. It might happen, for instance, that those on one side of the meridian of London should have to keep Easter a Sunday after those on the other side: nay, astronomical tables are exact enough to make it possible that a true astronomical Easter, according to a definition drawn from the real moon, should be observed on one Sunday in St. Paul's, and on another in Westminster Abbey; and as astronomy advances, it is perfectly conceivable that the true astronomical Easter should be one Sunday or another in St. Paul's only, according as it is to be solemnized, at one end or other of the building. *Encyc. Lond.*

EASTER-OFFERINGS, or **EASTER DUES**, small sums of money paid to the parochial clergy by the parishioners at Easter.

EASTER TERM, formerly called a moveable term, but now it is fixed, beginning on the 15th April, and ending on the 8th of May in every year, 11 Geo. IV., and 1 Wm. IV., c. 70. It is a non-issuable term, no assizes following it.

EASTERLING, a coin struck by Richard II., which is supposed to have given rise to the name of sterling, as applied to English money.

EASTINUS, an easterly coast or country.

EAT INDE SINE DIE, words used on the acquittal of a defendant, *that he may go thence without a day*, i. e., be dismissed without any further continuance or adjournment.

EAVES-DROPPERS, persons who listen under walls or windows, or the eaves of a house, to hearken after discourse and thereupon to frame slanderous and mischievous tales. They are a common nuisance, and presentable at the court-leet, or are indictable at the sessions, and punishable by fine and finding sureties for good behaviour. 2 *Hawk. P. C. c. 10*, § 58.

EBEREMORTH, **EBEREMORS**, **EBEREMURDER**. See **ABEREMURDER**.

Ecce modo mirum, quod femina fert breve regis. —(Behold, indeed, a wonder! that a woman has the King's writ!)

ECCHYMOSIS [*ἐκχῶσις*, Gk., to pour out, from *ἐκ*, out of, and *χῦμα*, juice], an appearance of livid spots on the skin, occasioned by an extravasation of the blood from a vein between the flesh and skin. It is in fact an effusion or spreading of blood into the cellular tissue, produced by violent contusion; it is sometimes extended to a considerable distance beyond the seat of the injury.

When the quantity of blood is sufficiently large to produce a tumour or swelling of any magnitude, it is called a *thrombus*. This subartaneous hæmorrhage may be produced from strictly internal causes, as coughing, vomiting, efforts at stool, &c. There should be a careful discrimination between ecchymosis and *sugillation*, which is applied to those hard spots, of various sizes, which are noticed on the bodies of the dead, after they become rigid and cold, and which is to be ascribed to the effects of gravitation. The blood obeys physical laws in the dead body, and hence it is found in the most depending situations, as the back of the body and the posterior portions of the lungs. So well is this established, that if the body be reversed and placed with its face downward, the lividity will change places and occupy the front part of the body. A discriminating mark between ecchymosis and sugillation is the following: when the discoloration is the effect of external violence, a congestion of thick *concrete* blood will be found, but in the spontaneous spot, the blood, on incision, will be found *fluid*.

Rieux proposes the question, whether contusions and their consequence, ecchymosis, can be produced on the dead body? The inquiry is important, not only from the possibility that injury may be inflicted on a corpse for the purpose of implicating an innocent person, but also from the rough treatment that bodies brought to the dissecting-room often receive. Upon this subject Dr. Christison makes the following remarks:—"For some hours after death, blows will cause appearances which, in point of colour, do not differ from the effects of blows inflicted recently before death. The discoloration, like lividity or sugillation, generally arises from an effusion of the thinnest possible layer of the fluid part of the blood on the outer surface of the true skin, but sometimes also from an effusion of thin blood into a perceptible stratum of the true skin itself. Dark fluid blood might even be effused into the subterraneous cellular tissue in the seat of the discoloration, so as to blacken or redden the membranous partitions of the adipose cells, but this last effusion is seldom extensive." Quoted by *Beck, Med. Jurisp.* 534.

ECCLESIA, a church, an assembly, a parsonage.

Ecclesia ecclesiæ decimasolvere non debet. Cro. El. 479.—(A church ought not to pay tithes to a church.)

Ecclesia est domus mansionalis Omnipotentis Dei. 2 Inst. 164.—(The church is the mansion house of the Omnipotent God.)

Ecclesia est infra ætatem et in custodiâ domini regis, qui tenetur jura et hæreditates ejusdem manutenere et defendere. 11 Co. 49.—(The church is within age, and in the custody of the king, who is bound to uphold and defend its rights and inheritances.)

Ecclesia fungitur vice minoris; meliorem conditionem suam facere potest, deteriore neququam. Co. Lit. 341.—(The church

enjoys the position of a minor; it can make its own condition better, by no means worse.)

Ecclesia non moritur. 2 Inst. 3.—(The church does not die.)

Ecclesiæ magis favendum est quam parsonæ. God. Rep. Can. 172.—(The church is to be more favoured than the parson.)

ECCLESIARCH [*ἐκκλησία*, Gk., church, and *ἀρχὴς*, a chief], the ruler of a church.

ECCLESIASTIC, or **ECCLESIASTICAL**, something belonging to or set apart for the church, as distinguished from *civil* or *secular*, with regard to the world.

ECCLESIASTICAL AUTHORITIES, principally the clergy under the sovereign, as temporal head of the church, set apart from the rest of the people or laity, in order to superintend the public worship of Almighty God and the other ceremonies of religion, and to administer spiritual counsel and instruction.

The clerical part of the nation are—I. Archbishops and bishops. II. Deans and chapters. III. Archdeacons. IV. Rural Deans. V. Parsons (under whom are included appropriators) and vicars. VI. Curates. VII. Churchwardens. VIII. Parish clerks and sextons.

ECCLESIASTICAL BENEFICE. See **ADVOWSON**, **BENEFICE**.

ECCLESIASTICAL COMMISSIONERS FOR ENGLAND, a body corporate, erected by 6 & 7 Wm. IV., c. 77, empowered to suggest measures conducive to the sufficiency of the established church, to be ratified by orders in council.

ECCLESIASTICAL CORPORATIONS, where the members are entirely spiritual persons, and incorporated as such, as bishops, certain deans, parsons and vicars, which are sole corporations; deans and chapters, and formerly prior and convent, abbot and monks, and the like bodies aggregate. These are erected for the furtherance of religion, and perpetuating the rights of the church.

The ordinary is their visitor, as constituted by the common law. The pope formerly, and now the Crown as supreme ordinary, is the visitor of the archbishop or metropolitan; the metropolitan has the charge and coercion of all his suffragan bishops, and the bishops in their several dioceses are, in ecclesiastical matters, the visitors of all deans and chapters, of all parsons and vicars, and of all other spiritual corporations. 1 Bl. Com. 470.

ECCLESIASTICAL COURTS [*curiæ christianitatis*], are the archdeacon's court; the consistory courts, the court of arches, the court of peculiars, the prerogative court, and the privy council, which is the great appeal court.

ECCLESIASTICAL DIVISION OF ENGLAND, is into provinces, dioceses, archdeaconries, rural deaneries, and parishes.

ECCLESIASTICAL LAW, the civil and canon law respecting spiritual offences and rights,

wills of personalty, and matrimonial and defamation causes.

ECDICUS [*ἐκδικω*, Gk., from *ἐκ* and *δίκη*, justice], an attorney or proctor of a corporation; a recorder. *Civil Law Term.*

E CONVERSO (on the contrary; on the other hand).

EDDERBRECHE [Sax.], the offence of hedge breaking. *Obsolete.*

EDESTIA [*ædes*], buildings. *Old Records.*

EDIA, ease; aid or help.

EDICT [*edictum*], a proclamation, command, or prohibition; a law promulgated.

EDICTAL CITATION, a summons against a foreigner not within Scotland, but who has a landed estate there, or against a native who is out of Scotland. The citation is published at the market-cross of Edinburgh and pier and shore of Leith, and is authorized partly by necessity, partly by the idea that whoever is possessed of property there, will have left a warrant with some one to attend to his interest in that court where alone any question in relation to it can be tried. *Scotch Law.*

EDICTUM THEODORICI. This is the first collection of law that was made after the downfall of the Roman power in Italy. It was promulgated by Theodoric, King of the Ostrogoths, at Rome, in the year A.D. 500. It consists of 154 chapters, in which we recognise parts taken from the Code and Novellæ of Theodosius, from the Codices Gregorianus and Hermogenianus, and the Sententiæ of Paulus. The edict was doubtless drawn up by Roman writers, but the original sources are more disfigured and altered than in any other compilation. This collection of law was intended to apply both to the Goths and the Romans, so far as its provisions went; but when it made no alteration in the Gothic law, that law was still to be in force. *Savigny Geschichte des R. R., &c.*

EEL-FARES, a fry or brood of eels. *25 Hen. VIII.*

EFFECTUAL ADJUDICATION, a legal security for a debt on the creditor's estate in Scotland. *33 Geo. III., c. 74, § 11.*

Effectus sequitur causam. Wing. 226.—(The effect follows the cause.)

EFFEERERS. See **APFEERERS**.

EFFORCIALITER, forcibly; applied to military force.

EFFRACTOR, [*ex*, out of, and *frango*, Lat., to break], one that breaks through; a burglar.

EFTERS [Sax.], ways, walks, or hedges. *Blount.*

EFFUSIO SANGUINIS, the mulct, fine, or penalty imposed by the old English laws for the shedding of blood, which the king granted to many lords of manors. *Cartular MSS.*

E. G. [*exempli gratiâ*], for the sake of an instance or example.

EGISTMENT. See **AGISTMENT**.

EIA, or **EY**, an island.

Ei incumbit probatio, qui dicit, non qui negat: cum per rerum naturam factum negantis pro-

batio nulla sit.—(The proof lies upon him who affirms, not upon him who denies; since, in the nature of things, the fact of denial is no proof.)

Ei nihil turpe, cui nihil satis. 4 Inst. 53.—(To whom nothing is sufficient, to him nothing is base.)

EJECTA, a woman ravished or deflowered, or cast forth from the virtuous.

EJECTUS, a whoremonger. *Blount.*

EJECTIONE CUSTODIÆ, [*ejectment de garde*, Fr.], a writ that lay against him who had cast out the guardian from any land during the minority of the heir. *Reg. Orig.* 162. There were two other writs not unlike this; the one termed *ravishment de gard*, and the other *droit de gard*.

EJECTIONE FIRMÆ, ejection of a farm.

EJECTMENT, the only mixed action at common law, the whole method of proceeding in which is anomalous, and depends on fictions invented and upheld by the courts for the convenience of justice, in order to escape from the inconveniences which were found to attend the ancient forms of real and mixed actions.

This possessory action is mixed, because it seeks to recover the possession of land (which is real), and damages and costs for the wrongful withholding of the land (which are personal). The title to lands and tenements is tried by this action, whether the title be to an estate in fee, fee tail, for life, or for years. It is a more comprehensive mode of trying title, than by an action of trespass, for in trespass damages alone are recovered, while in ejectment the possession can be acquired as well as the title ascertained, and thus better adapted to the ends of substantial justice. And although the damages in ejectment are merely nominal, yet actual damages for the injury sustained by the rightful party, in having been kept out of possession of the land by the wrongful party, from the accrual of his title to the recovery of possession, can be obtained by an action of trespass for mesne profits.

This action exhibits the most remarkable string of fiction now recognised by the courts of common law. The original mode of proceeding was this:—the party having the right of entry upon the land, entered upon it, and being then in possession, he there upon the land sealed and delivered a lease for years to some third person, who, having thus entered, remained in possession, until the prior tenant, or he who had the previous possession, entered and ousted him, or until some other person, either by accident or previous arrangement, came upon the land and ejected him, whereupon the lessee brought his action against the casual ejector, or the prior tenant. If the action were brought against the casual ejector, and not against the very tenant in possession, the courts of law, not suffering the tenant to lose his possession without an opportunity of defending it, promulgated a rule that no plaintiff should proceed in ejectment to

recover lands against a casual ejector, without notice given to the tenant in possession, if there were any, and making him a defendant if he pleased.

But during the reign of our second Charles, Lord Chief Justice Rolle introduced the fictitious mode of proceeding, which forms the present practice. Since much trouble and formality attended the actual making of the lease, entry, and ouster, as above described; no lease is sealed (except in the case of vacant possession), no entry and ouster actually made (unless to avoid a fine, which, though abolished by 3 & 4 Wm. IV., c. 74, yet an entry must still be made to avoid a fine, commenced before the passing of this act), the plaintiff and defendant are fictitious persons, and all the preliminaries are purely ideal, for the sole purpose of trying the title. The action is now commenced by the party claiming title delivering to the party in possession a declaration, in which the plaintiff (John Doe) and the defendant (Richard Roe) are fictitious persons. The declaration states that a lease of the premises in question for a term of years had been made by the party claiming the title (who is the real plaintiff) to John Doe, the lessee of the plaintiff, who entered upon the land by virtue of such demise, and that afterwards Richard Roe, the casual ejector, entered and ousted John Doe, during the continuance of his term. Appended to this declaration is a notice, signed by Richard Roe, addressed to the tenant in possession (who is the actual defendant). The notice informs the tenant of the action having been brought by the lessee, and of Richard Roe having no title to the premises, and advises him to appear at a certain time and defend his title, otherwise he, Richard Roe, will suffer judgment by default, by which the actual tenant will be turned out of possession by the sheriff.

The plaintiff, in order to maintain his action at the trial, must make out these four points:—viz., *title, lease, entry, and ouster*. The real defendant, therefore, will be admitted to defend upon condition of his entering into a consent rule to confess, at the trial of the cause, the lease of the lessor, the entry of the plaintiff John Doe, and the ouster by Richard Roe. These requisites being fictitious, could not be proved, and a nonsuit would be the consequence, but by the actual defendant's confession of them, he agrees not to avail himself of the want of such proof, but to rest his defence entirely upon the merits of his title. And to prevent his breaking his engagement, a condition is added, that in such case he shall pay the costs of the suit, and shall allow judgment to be entered against the casual ejector (Richard Roe).

The title of the action, after the tenant's appearance, stands thus:—Doe (the fictitious lessee), on the demise of ——— (the lessor or person really claiming the title), against ——— (the real defendant, the casual ejector, Richard Roe, having withdrawn).

The plaintiff must have the legal title, for it is a strict rule that the legal title must prevail even over an equitable one. It is a maxim that the plaintiff must recover on the strength of his own title, and not on the weakness of that of his adversary. It suffices, however, to prove undisturbed possession of an estate by the claimant or his ancestor for twenty years, from which the highest title is to be presumed, until the contrary be proved.

Besides the legal title, the plaintiff must have a right of entry upon the lands at the time of the demise, laid in the declaration; but it will not affect him, if he lose this right before trial. By the 39th sec. of 3 & 4 Wm. IV., c. 27, no descent, discontinuance, or warranty, happening after 31st December, 1833, shall defeat a right of entry or action for the recovery of land. The 2d and 3d secs. of the same act do away with the doctrine of non-adverse possession, and a very numerous class of cases connected therewith. The same statute limits the length of time necessary to take away a right of entry, and to bring ejectment, the 2d sec. enacting that, after the 31st December, 1833, no person shall make an entry or distress, or bring an action to recover any land or rent, but within twenty years next after the time at which the right to make such entry or distress, or to bring such action, shall have first accrued to some person through whom he claims; or if such right shall not have accrued to any person through whom he claims, then within twenty years next after the time at which the right, &c., shall have first accrued to the person making or bringing the same. In the construction of this act, this right shall be deemed to have first accrued at the time set forth in the 3d sec., i. e., when the person claiming such land or rent, or some person through whom he claims, shall, in respect of the estate or interest claimed, have been in possession or in receipt of the profits of such land, and shall, while entitled thereto, have been dispossessed or have discontinued such possession or receipt, then such right shall be deemed to have first accrued at the time of such dispossession or discontinuance of possession, or at the last time at which any such profits or rent were or was to be received.

And when the person claiming such land or rent shall claim it of some deceased person who shall have continued in such possession or receipt in respect of the same until his death, and shall have been the last person entitled thereto who shall have been in such possession or receipt, then such right shall be deemed to have first accrued at his death.

And when the person claiming, &c., shall claim in respect of an estate or interest in possession, granted, appointed, or otherwise assured by any instrument (other than a will) to him, or some person through whom he claims, by a person being in respect of the

same in the possession or receipt of the profits of the land, or in the receipt of the rent, and no person entitled under such instrument shall have been in such possession or receipt, then such right shall be deemed to have first accrued at the time at which the person claiming as aforesaid, or the person through whom he claims, became entitled to such possession or receipt by virtue of such instrument.

And when the interest claimed shall have been in reversion or remainder or other future estate or interest, and no person shall have obtained the possession or receipt of the profits or rents, then such right shall be deemed to have first accrued at the time at which such interest came into possession.

And when the person claiming, or the person through whom he claims, shall have become entitled by reason of any forfeiture or breach of condition, then such right shall be deemed to have first accrued when such forfeiture was incurred, or such condition was broken.

The 10th, 11th, 12th, 13th, and 14th secs. annul the effect of mere entry, continual claim, *possessio fratris*, and other modes of constructive possession, and require a written acknowledgment (not upon a stamp) from the party in possession or in receipt of the profits of the land, to the person entitled, or his agent, as the only equivalent to actual possession, so as to preserve the right of entry, and prevent the statute from running in cases where some other than the person really admitted is in possession or receipt of the profits of the land.

The 15th sec. reserves a right for five years after the passing of the act, in all cases where the possession was not adverse at the time of its passing.

Where persons are under the disabilities of infancy, coverture, idiocy, lunacy, unsoundness of mind, or absence beyond seas, when the right of entry accrues, a right of action is allowed for ten years after the disability ceases, or the person under disability dies, which shall first happen; provided that in such cases the action is brought within forty years after the right of entry accrues, though the disability may have continued the whole of that time. And no further time is to be allowed in case of a succession of disabilities. Provided that lands and rents may be recovered by spiritual and eleemosynary corporations sole, within two incumbencies, and sixty years, or (in case that period should not amount to sixty years) within sixty years.

The 7 Will. IV., & 1 Vic., c. 28, after reciting that, doubts of the effect of the above act had been entertained as to mortgages, declares and enacts that it shall be lawful for any person entitled under any mortgage of land, being land within the definition contained in the 1st sec. of the said act, to make an entry or bring an action or suit to recover such land within twenty years next after the last payment of any part of the

principal money or interest, although more than twenty years may have elapsed since the time at which the right to make such entry, &c., shall have first accrued.

An action of ejectment may be brought by the following persons, provided they have both the legal title, and the right of entry or possession:—

Aliens, born out of the allegiance of Great Britain, whose fathers or grandfathers on the father's side, were natural born subjects (7 Ann., c. 5; 4 G. II., c. 21; and 13 Geo. III., c. 21).

Assignees of bankrupts' estates; all the bankrupt's real and personal property, which he may be possessed of at the time of his bankruptcy, or which he may acquire before obtaining his certificate, vesting in the assignees by virtue of their appointment; but his copyhold or customary tenements are disposed of by the commissioners, the assignees only being empowered to receive the rents and profits of such estates (6 Geo. IV., c. 16, §§ 63, 64; 1 & 2 Wm. IV., c. 56, §§ 25 & 26; and 3 & 4 Wm. IV., c. 74).

Assignees of an insolvent's estate (1 & 2 Vic., c. 110, § 51).

Committee of a lunatic (1 Wm. IV., c. 65).

Conusee of a statute merchant or staple (Co. Lit. 42, a).

A copyholder (*Doe d. Tressider v. Tressider*, 1 Gale & D. 70); lessees of copyholders (Cro. Eliz. 536); and widows entitled to freebench (Ambl. 299).

Corporations, either aggregate or sole (*Doe d. The London Dock Company v. Knebell*, 2 Mood. & R. 66).

Devisees and legatees. They may maintain ejectment for a chattel real, either against the executor, or a stranger, but the executor's assent to the bequest must be shewn (6 Barn. & Cres. 112; *Young v. Holmes*, 1 Stra. 70).

Grantee of rent charge, with power to retain until satisfaction (1 Saun. 112). Also grantees of lords of manors (*Doe d. Cosh v. Loveless*, 2 Barn. & Ald. 453).

Guardians in socage,—also called guardians by the common law. It only arises when the infant is entitled to some estate in lands, and then the guardianship devolves upon his next of kin to whom the inheritance cannot possibly descend, as where the estate descended from his father, in this case his uncle by the mother's side cannot inherit, and therefore shall be guardian (Litt. 123; 2 Roll. Abr. 41); and testamentary guardians (12 Car. II., c. 24, § 8), but not a guardian for nurture.

Infants, upon giving security for costs (2 T. R. 159).

Lords of manors (*Adam's Eject.* 61).

Mortgagee. Where the premises have been let for years, and afterwards mortgaged, the tenant cannot be ejected by the mortgagee, and it is doubtful whether he could recover, even if he had given notice to the tenant, that it was not intended to disturb his possession, but only to require the rent

to be paid to him, and not to the mortgagor. But where the lease has been made subsequently to the mortgage, without the mortgagee's privity, he may recover against the tenant, without giving such notice, because the mortgagor has no power to lease, not subject to every circumstance of the mortgage; and therefore such a tenant is a trespasser, and may be ejected by the mortgagee without notice to quit (8 T. R. 2; 1 Dougl. 21).

Personal representatives (1 Vic., c. 26, § 6).

Persons having adverse and uninterrupted possession for twenty years (3 & 4 W. IV., c. 27, §§ 16, 17); and persons claiming under an award (13 East, 15).

Rectors or vicars for tithes against persons claiming title thereto, but not for refusing to set them out, nor where there is a composition, nor after sequestration (Dyer, 116, b.; 3 Campb. 447).

Reversioners and assignees of the reversion (32 Hen. VIII., c. 34).

Tenants, whether joint, in common, or coparcenary (3 & 4 Wm. IV., c. 27, § 12); and also by *elegit* and *fi. fa.* (Bull. N. P. 104).

Trustees of real estates (*Adam's Eject.* 89).

This action is maintainable for any thing, whether corporeal or incorporeal, upon which an entry can be made, or the sheriff can give possession; and if it be brought to recover water (as ponds or streams), it must be described as so many acres of land covered with water. *Run. Eject.* 126.

A notice to the tenant to quit is only necessary, where the time of quitting is not agreed upon between the parties; for, where a lease is determinable on a certain event or at a fixed time, it is not necessary to give such notice, both parties being apprized of the determination of the term (1 T. R. 54, 162). A notice is not necessary, where the possession is adverse, or where the relation of landlord and tenant does not subsist; as if the tenant had attorned to another person, or done some act disclaiming the landlord's title. But if the acts done by the tenant do not amount to a disavowal of the landlord's title, he has a right to have notice (*Bull. N. P.* 96). A notice to quit is generally necessary in order to determine a tenancy from year to year; and a tenancy at will, in consequence of its inconveniences, is construed by the courts as tenancy from year to year, if they can find any foundation for it (4 Taunt. 128). This notice must end with the year of the tenancy, and must be given at least half a year (182 days) previously; but if the rent be payable on the usual quarterly feast days, a notice to quit on the next but one is sufficient. When the landlord intends to enforce his claim for double value, if the tenant hold over, it is necessary that the notice to quit be in writing (4 G. II., c. 28, § 1); but for the purpose of an ejectment, a parol notice is sufficient, unless the notice is required to be in writing by

express agreement between the parties (5 Esp. 196). But it is the general practice to give written notices, and it is a precaution which should always, when possible, be observed, as it prevents mistake, and renders the evidence certain and correct.

A receipt for rent up to a particular day is a *prima facie* evidence of the commencement of the tenancy at that day (2 Esp. 635). The notice should be served personally upon the tenant in possession; but if personal service cannot be effected, it will be sufficient to leave it with the wife or servant, at the tenant's usual place of residence, explaining its nature and contents (4 T. R. 464).

If a landlord receive rent, accrued due, after the expiration of a notice to quit, it is a waiver of the notice (5 T. R. 219). So if he distrain for such rent (1 H. B. 311). But the mere acceptance of rent by the landlord for occupation subsequent to the time when the tenant ought to have quitted, according to the notice, is not of itself a waiver of such notice, but matter of evidence only, to be left to the jury, under the circumstances of the case (9 East, 314, n).

As to the practical proceedings, they may be thus treated:—

1st, In ordinary cases, at common law, where there is a tenant in possession:—

The proceedings in this action begin with the declaration, purporting to be a complaint by a party, *John Doe*, who is judicially taken notice of as a nominal plaintiff, and technically called the lessee of the plaintiff, against another, *Richard Roe*, who is also recognised as a nominal defendant, and called the casual ejector, of an alleged eviction or ejectment from premises of which the nominal plaintiff claims to be possessed by virtue of a demise from the person really entitled.

This declaration should be entitled in the court, otherwise it is irregular. It should also be entitled of some date. Formerly it was necessarily entitled as of the preceding term, and there seems to be nothing in the new rules to alter the former practice, nor in the nature of these proceedings to require an alteration. It is immaterial, however, whether the declaration be entitled of the term, or of a particular day; it will be good either way for the purpose of obtaining a rule for judgment. And if it be dated of a future term, or of a year not yet come, or even if it be not dated at all, provided the notice be correct, the courts will grant a rule for judgment.

The action of ejectment is local, and the *venue* is denoted, as in other actions, by the county in the margin; there must be what is also called a *venue* in the body of the declaration, that is, a mention of the place where the lands lie; and if this be correct, a wrong county in the margin will not prevent a rule for judgment. The principle of the rules requiring brevity in the mode of statement, is applied to the pleadings in ejectment, although the rules prohibiting the use of

several counts upon the same cause of action, do not comprehend the several demises in ejectment.

The notice to appear, signed Richard Roe at the bottom of the declaration, should, if possible, be addressed to the tenant by his christian and surname: its purport is to inform the tenant of the nature of the proceeding, and requiring him to appear thereto at the proper time, or otherwise to be turned out of possession. If the christian name be wrong, or even if there be no name at all, it will be of no importance, if the party serving it inform the tenant that he is the party for whom it is intended. If the venue be laid in London or Middlesex (and it must be laid in the county where the premises lie, unless otherwise ordered by the court,) the notice should require the tenant's appearance on the first day of the next term, or within the four first days thereof; if the venue be laid in any other county, then for the next term generally. A plaintiff may have leave to amend a defective declaration, even after plea pleaded.

The declaration with the notice must be served before the first day of the term in which the tenant is required to appear, otherwise it will be a nullity. It cannot be served on a Sunday or *dies non*. A copy should be served upon each tenant, and the notice at the foot should be read over, or at least the purport of it should be signified, and the nature and meaning of the service explained to the person upon whom it is served, so as to be fully understood by him. Where different parts of the premises are in possession of different tenants, each of them must be served with a copy, in order to obtain a rule against the casual ejector for the whole. It should be served, if possible, upon the tenant himself, anywhere, even out of the jurisdiction. If on his wife, it may be served either on the premises, or at the husband's house, or any other place, supposing she be living with him; in all other cases it must be served on the premises: if it be served upon a child, servant, or other person, proof must be given that the tenant received it before the term, *except* where he is abroad, or has absconded, or where he keeps out of the way to avoid service. So service on the secretary or the managing officer of a public company on the premises will be sufficient; or on the messenger in possession, and the official assignee, in cases of bankruptcy, or for the recovery of a chapel, on the chapel warden, sexton, or other person, holding the keys, and posting it on the chapel doors; or for a house rented by a parish, service upon each of the churchwardens or overseers will be sufficient. And service upon one of two or more joint-tenants is good service on all.

An affidavit of this service must then be made, either by the party effecting it, or by a person present at the time: it should be entitled "John Doe on the demise," or "the several demises of A., B., & C., plaintiffs,

against Richard Roe, defendant." It should set forth that the tenant in possession was served with a true copy of the declaration and notice annexed, and how and when the service was effected; if on the wife, that she was living with her husband, or served at the husband's residence; if on the child, servant, &c., that such party had subsequently stated that he or she had delivered it to the tenant, or that the tenant had acknowledged that he received it, before the first day of the term, or it must show either by direct averment, or by circumstances and belief, that the tenant has gone abroad, or has absconded, or avoids service: it must also allege that the notice was read over or explained, and by whom, or it must show some valid reason why it was not done, as that the party went away and would not hear it, &c.; this affidavit may be sworn before a Judge in town, or a commissioner in the country; but not before the plaintiff's attorney, his clerk, agent, or partner.

If the tenant do not take steps to have himself made a party to the action, the plaintiff becomes entitled to a judgment by default against the casual ejector. The affidavit must be annexed to the declaration, and endorsed "to move for judgment against the casual ejector;" this is signed by counsel; no motion is made to the court, where the service was on the tenant or his wife; it is at once taken to the rule office, and one of the Masters draws up the rule, which orders, that unless the tenant in possession of the premises in question shall appear and plead to issue on a day certain, let judgment be entered for the plaintiff against the nominal defendant. The rule requires the appearance to be entered on the fourth day after its date, in town cases; and in country cases, on the fourth day after the end of the term, whether issuable or not. This is then a rule *nisi* for judgment; it is not served, but merely entered at the Master's. If the declaration be left with the child, servant, &c., *and there be only his statement*, the rule for judgment will be a rule *nisi* in the first instance. Then the court must be moved, upon an affidavit of facts, for a rule to show cause why such service shall not be deemed good service, and that leaving a copy of the rule with some person on the premises, or affixing it upon the outer door, if no person can be met with, shall be deemed good service; draw up the rule, serve it, and if no sufficient cause be shown, apply to have it made absolute upon an affidavit of service. This rule must be drawn up and taken from the Master's office, within two days after the end of the term in which it was moved for, or no further proceedings can be had. The motion cannot be made *after* the expiration of two terms from the service of the declaration.

On the morning of the day after that on which the rule expires, if there be no appearance of the defendant, the plaintiff takes his judgment, upon which he may issue his execution; if the judgment be signed too early,

or there be any irregularity in it, it will be set aside at the instance either of the tenant in possession or the landlord. And at any time before a writ of possession is executed, it may, upon an affidavit of merits, or that the defendant believes there is a good defence, be set aside, or the proceedings stayed on payment of costs, in order to let in the tenant or other person claiming title to defend the action, and oblige the plaintiff to accept a plea; but this indulgence will not generally be granted after execution completed.

The tenant, within the time limited by the rule for judgment, or the further time which may be obtained as in ordinary cases, enters his appearance at the Master's office, where the consent rule is marked, by which the defendant undertakes to appear instead of the casual ejector, and receive a new declaration; and by a rule of the courts, the defendant is to specify therein "for what premises he intends to defend, and shall therein consent to confess upon the trial that he (if he defend as tenant, or if he defend as landlord, that his tenant) was, at the time of the service of the declaration, in the possession of such premises; and that if upon the trial the defendant shall not confess such possession, as well as lease, entry, and ouster, whereby the plaintiff shall not be able further to prosecute his suit against the defendant, then no costs shall be allowed for not prosecuting the same, but the said defendant shall pay costs to the plaintiff, in that case to be taxed." According to the usual terms of the consent rule, the general issue only is pleadable; but the court, upon application, will grant leave to plead to the jurisdiction, as a plea of ancient demesne, which must be pleaded within four days, or within the four first days of the term, although that happen to be before the expiration of the time limited for the tenant's appearance. Time to plead can, of course, be obtained. The plea should be entitled in the court and in the cause, dated as of the term in or of which it is pleaded and delivered, with the consent rule, to the opposite attorney. Where part only of the premises is defended, judgment and execution may be taken for the residue.

The tenant is bound, under a penalty of three years' improved or rack-rent, to give his landlord, *forthwith*, notice, when a declaration in ejectment has been served upon him. The motion for the landlord to be admitted to defend, either with the tenant or by himself, is a motion of course, requiring only counsel's signature, upon which a rule is drawn up at the Master's, which is annexed to the consent rule and plea, and delivered, as in ordinary cases. If the landlord appear alone, the rule gives liberty to the plaintiff to sign judgment against the casual ejector, but execution to be stayed till further order. If the landlord do not appear at the trial, upon production of the *postea* and office copies of the rules, a rule *nisi* for execution will be granted.

The defendant may, after entering into the consent rule, withdraw his plea and confess the action, upon which the plaintiff, after entering a *relictâ verificatione*, may sign final judgment upon such *cognovit*.

The following are some of the incidental proceedings:—

The defendant, upon entering appearance, may issue a summons for a bill of the particulars of the premises, &c., where any reasonable doubt exists; or a particular of the covenants and breaches; or of the lessor's residence. He may also move to stay proceedings until a guardian shall be appointed for an infant lessor, to answer costs, or, where the lessor of the plaintiff is abroad, or dead, or unknown, until security for costs be given, or to stay proceedings in a second action, until the costs of the first are paid, and so on. If a demise be inserted in a declaration, in the name of a party without consent, the court or a Judge, upon the application of the party, as speedily as possible after knowledge thereof, will order it to be struck out, unless the justice of the case would be defeated, and an indemnity has been tendered to him; and an appearance or plea may be set aside upon the same grounds.

Where several ejectments are brought for the same premises, upon the same demise, the court or a Judge will order them to be consolidated; and where there are several defendants to whom the plaintiff has delivered declarations for the recovery of the same premises, the court would, on the plaintiff's motion, join them all in one declaration, although they are severally concerned in interest; though before the 3 & 4 Win. IV., c. 42, which gives one of several defendants who is acquitted, his costs, the court would not have done so.

If the plaintiff delay drawing up the rule, or replying within the time limited by the rule, which is four days, the defendant may sign judgment of *non pros*.

By the terms of the consent rule, the defendant is to accept a declaration for the premises in question, and plead thereto the general issue. But since the plea invariably accompanies the consent rule, no declaration is delivered, but the lessor makes up the issue at once, describing the premises as they are set forth in the consent rule, substituting the name of the defendant for that of the casual ejector, but omitting in the issue the notice to appear appended to the declaration. The issue should be entitled of the term in which the plea was delivered, or in which issue was or is supposed to be joined.

The notice of trial is endorsed on the issue, and is the same as in ordinary cases, a copy of the consent rule is then annexed, and it is delivered to the defendant's attorney; the proceedings are then the same as in other cases—thus, the jury process is sued out, the *nisi prius* record is made up, and the cause entered for trial, and briefs delivered, &c.

If the plaintiff proceed not to trial according to his notice, unless he have countermanded in time, the defendant shall have his costs of the day, or judgment as in case of a nonsuit.

There being but one plaintiff in ejectment, several lessors cannot be heard separately by counsel, although separately interested; and if landlord and tenant defend by different attorneys and different counsel, and the tenant claims no title but what he derives from the landlord, only one counsel can address the court; but the other counsel will be allowed to call and cross-examine witnesses.

The consent rule should be produced as part of the plaintiff's case, and proof also of the service of declaration; the defendant may give any special matter in defence under the plea of the general issue.

If defendant do not appear at the trial and confess lease, entry, and ouster, and that he or his tenant was in possession at the time of the service of declaration, the plaintiff is nonsuited, which, being endorsed on the *postea*, entitles the plaintiff to judgment against the casual ejector, except in ejectment by *landlord* against tenant, when, upon proof of the service of notice of trial, plaintiff shall not be nonsuit, but production of the consent rule shall be sufficient evidence of the lease, entry, and ouster.

The damages are merely nominal in ordinary ejectments, the actual damages by the detention of the property being usually recovered by an action of trespass for mesne profits. A Judge may certify for immediate possession, when a writ issues accordingly, and costs taxed, and judgment signed and executed afterwards, as if no such writ had issued. An affidavit of circumstances should be laid before the Judge. If this certificate cannot be obtained, then, on or after the day in banc, or, if the cause be tried in the vacation, on the first day of the ensuing term, sign judgment against the casual ejector, and sue out execution.

The successful party is entitled to his costs; and where the plaintiff is nonsuited, because the defendant has not confessed lease, entry, and ouster, the defendant is liable for costs according to the terms of the consent rule. If the plaintiff have a verdict, the costs are recoverable by execution as in personal actions, but if entitled to costs under the consent rule, it is by execution founded thereon under the 1 & 2 Vict., c. 110, § 18, or by attachment. And execution can also, under the same act, be had by the defendant, when he is entitled to costs; it was by attachment only, because the lessor of the plaintiff was not a party to the record. Now, where the lessor of the plaintiff died between the commission day and the trial, and he was nonsuited on the merits, his executor was not liable to costs; but where husband and wife were lessors, and he died after entering into the rule, the wife was held liable, because both of them were

lessors. The court can, in ejectment, but not in any other action, compel the real defendant to pay the costs, though he be not a party to the record; "for the court," said Lord Tenterden, "will not permit a person to put a mere pauper into possession to evade the costs." And if a stranger carry on a suit in the name of another who has title, but is poor and cannot pay the costs, in case he fail, upon an affidavit of the circumstances, the court will order such stranger to pay costs to the defendant.

The writ of execution is the *habere facias possessionem*, tested as of the term, and where possession has not been completely given under it, an *alias*, &c. If any disturbance take place after delivery of possession, the court, upon application, would punish the defendant by attachment. Outer doors may be broken open to execute this writ. The tenants may attorn in lieu of this writ; and the plaintiff may enter without suing it out, if he can do so without force. Now, when a landlord is admitted to defend, and judgment is entered against the casual ejector, with a stay of execution until further order, and the landlord appears not at the trial, and the Judge does not certify, the lessor must move the court for a rule *nisi* to issue execution. The writs of *fi. fa.* or *ca. sa.* for the costs, may either be separate writs, or may be embodied in the *habere facias possessionem*.

When the execution does not issue within a year and a day after judgment, it must be revived by *scire facias*, as in other cases; and when the judgment is against the casual ejector, the terre-tenants must be joined in the writ, otherwise the court will award a restitution *quare erronee emanavit*. Inasmuch as the plaintiff is seldom the *real person*, his death would make no difference; but where the defendant died after judgment, but before execution, the safest course is to issue a *scire facias* against the terre-tenants of the land; and unless the personal representative be the terre-tenant, a *scire facias* must issue against him for the costs. If the judgment be against a *feme sole*, who marries before execution, the *habere facias possessionem* should be sued out in her maiden name for the land; and a *scire facias* against her and her husband for the costs.

The proceedings of a writ of error on a judgment is the same as in other cases, with one or two exceptions. Bail is required where a defendant brings a writ of error after verdict for plaintiff; and the recognizance is taken for the amount of double the yearly value, and double costs of the ejectment. As the casual ejector *cannot* bring error, being but a nominal party, the writ can only be brought after defendant has appeared and confessed lease, entry, and ouster; and if the landlord be permitted to defend, the writ of error cannot issue in the name of the casual ejector; but if error, *coram nobis*, be sued out in the casual ejector's name, it must be taken to be sued out

at the instance of a proper party, until it is set aside. Nothing can be assigned for error, that would make it necessary to go again into the title of the premises. The plaintiff cannot sue out execution until the writ of error be determined, provided bail be put in and perfected: but the court will oblige the defendant to enter into a rule not to commit waste pending the writ. If, upon error brought, the judgment be affirmed, or the plaintiff in error discontinue or become nonsuit, the court from which execution should issue, shall award a writ to enquire as well of the mesne profits as of the damages by any waste committed after the first judgment in the ejectment; upon the return of the writ of enquiry, judgment is given and execution awarded for such mesne profits and damages, and also for costs of suit; for which the bail in error are liable, recoverable by action against them. If the judgment be reversed, a writ of restitution is awarded.

2nd. As to proceedings in ejectment upon a vacant possession:—

The person who has the right of entry, may, if the premises be unoccupied and vacant, peaceably and without force, enter and take possession of them, without bringing an ejectment; though it is best to proceed by ejectment, more especially where he claims adversely to the person last in possession. What is a vacant possession? It is a nice question. A distinction must here be made between actual abandonment of possession and discontinuance to occupy, still retaining the virtual possession. Locking up the premises and quitting is an instance of actual abandonment; leaving anything, such as hay in a barn, will be an instance of discontinuance of possession. In the former case the landlord must proceed in the ejectment as upon a vacant possession; in the latter in the ordinary way, after effecting the best service of the declaration in his power.

The proceedings on a *vacant* possession are, first, to make an actual entry on the premises, either by the lessor of the plaintiff, or some person authorized by letter of attorney; getting upon the threshold of the door, putting a finger into the keyhole, or laying hold of a bar of the door, would be deemed a sufficient entry where the house is locked up. Two friends should go with the lessor or his agent, and having made the entry, a lease, previously prepared, is executed to one of the friends, not being an attorney, who is then put into immediate possession; the other friend then enters and thrusts out the newly made lessee; whereupon this second friend, the ejector, is immediately served with a declaration in ejectment, in which he is made defendant, and the thrust out friend plaintiff.

All this should be done before the first day of term, otherwise judgment could not be moved for in the term. To obtain judgment, make affidavit of the lease, entry, ouster, and service of declaration and notice, sworn before a Judge or commissioner, an-

nex it to the lease, and copy declaration and notice and letter of attorney; and where the lease is executed by power of attorney, there must be an affidavit of the execution of the power. Obtain counsel's signature, draw up the rule, sign judgment, and issue execution as before explained. In the Common Pleas no affidavit of lease, entry, &c., is necessary; but the plaintiff gives a rule to plead, at the expiration of which he signs judgment, &c. It is to be observed that, in these cases, no person claiming title can be let in to defend; he must have recourse to his action.

The 11 Geo. II., c. 19, § 16, and 57 Geo. III., c. 52, give a power to two justices of the peace, when premises are deserted by a tenant, and no sufficient distress is to be found upon them to answer the arrears of rent, to give possession of them to the landlord.

3rd. Proceedings in ejectment by landlord, for forfeiture by non-payment of rent:— &c.

And, first, where there is a sufficient distress upon the premises, the proceeding must be at common law; but before the ejectment is brought (the proceedings of which have been previously described, according as the tenant is in possession, or the possession is vacant), a demand of the rent must be made, unless there is an express agreement dispensing with such demand. And inasmuch as the common law does not favour forfeitures, great strictness is required in this respect. The landlord, or another person under a formal power, must go in person, upon some notorious place on the land, as before the front door of the dwelling-house; unless the lease specify a place for payment of rent, then, upon the place pointed out, on the last day on which the rent can be paid, to save a forfeiture, and this depends upon the proviso in the lease, at sunset, and demand the precise sum due, not a farthing more or less, although, in fact, nobody is present upon the part of the tenant to answer: if the rent be not then paid, the landlord is entitled to bring his ejectment. This proceeding is seldom practised, both on account of this nicety of the demand, and because the tenant, by filing a bill in equity, may obtain an injunction staying proceedings, upon paying the arrears of rent.

Secondly, where there is *not* a sufficient distress upon the premises, the ejectment is then regulated by 4 Geo. II., c. 28, which enacts, that where half year's rent shall be in arrear, and a right of re-entry has been reserved by the express terms of the lease, and no sufficient distress can be found on the premises to countervail the arrears of rent, the landlord or lessor may, without any demand or re-entry, serve a declaration in ejectment; and unless the tenant pay the rent and costs within six calendar months, he is to be deprived of all relief at law or equity, and the tenancy is absolutely determined. The proceedings are then the same as in ordinary cases, *mutatis mutandis*.

4th. The proceedings in ejectment upon the determination of a tenancy, under 1 Geo. IV., c. 87, may be adopted in all cases where the term or interest of any tenant holding, under a lease or agreement in writing, any lands, tenements, or hereditaments, for any term or number of years certain, or from year to year, shall have expired or been determined, either by the landlord or tenant, by regular notice to quit; and such tenant, or any one holding or claiming by or under him, shall refuse to deliver up possession accordingly, after lawful demand in writing made thereof. A landlord may either adopt this mode under the statute, or the ordinary proceedings first treated of. The declaration and notice are the same as before described, except that the notice is addressed to the tenant to appear on the first day of the next term, and to give bail for costs and damages, which must be signed by the real landlord, or his agent, and not by the fictitious Richard Roe. A motion, supported by an affidavit, of the value of the premises and of the regular notice to quit, should be made for a rule to show cause why the tenant should not find bail, or, in default, judgment against the casual ejector; draw up the rule, and serve it on the day appointed for showing cause; move, upon an affidavit of service, to make the rule absolute, which is also served. Two sufficient sureties, and the tenant, who is not examined as to his sufficiency, join in the recognizance, which must be put in suit against them in six months after landlord obtaining possession. The other proceedings are the same as in ordinary ejectments. The landlord will not be nonsuited on the trial on account of the defendant's non-appearance; for notice of trial having been served, the production of the consent rule and undertaking shall be sufficient evidence of lease, entry, and ouster: *actual damages* for mesne profits are, in this case, given; and the defendant must give two *additional* sureties on bringing error.

5th. Possession can be obtained by summary proceedings before two justices, where the term exceeds not seven years, nor the rent more than 20*l.*, no fine being reserved, under 1 & 2 Vict., c. 74.

6th. As to proceedings in ejectment by landlord under 11 Geo. IV., and 1 Wm. IV., c. 70, §§ 36, 37, after reciting that landlords, whose right of entry accrues after Hilary or Trinity Term, cannot prosecute ejectment at the immediately ensuing assizes, from which inability arise delays and wrongs, enacts, that, in such cases, it shall be lawful for the lessor of the plaintiff "at any time, within ten days after tenancy shall expire, or right of entry accrue, to serve a declaration in ejectment, entitled of the day next after the day of the demise in such declaration, whether the same be in term or vacation, with a notice requiring the tenant to appear and plead thereto, within ten days, or judgment; and then the proceedings are the same as in ordinary cases, provided that, at

least, *six clear days' notice of trial*, before the commission day, be given to the defendant, who may apply for time to plead, for staying or setting aside proceedings, or for postponing the trial; all which is in the discretion of the Judge to order." Such applications should be supported by an affidavit of facts. This statute extends to country ejectments triable at the assizes, but not to those of Middlesex or London. Hilary and Trinity are called issuable terms, because they immediately precede the assizes.

The resulting action of trespass for mesne profits, i. e., the amount of the yearly value of the premises, may be brought as soon as actual possession is obtained (*except* in the case of landlord and tenant, under 1 Geo. IV., c. 87, when these *actual* damages are given, as already shewn). It may be brought either in the name of the nominal plaintiff in the ejectment, when security for costs must be given upon application, or in the name of the lessor, generally against the person who had judgment against him in the ejectment, or against the executors or administrators, for the profits received within six calendar months before the death of the testator or intestate, the action must then be brought within six months after they have taken upon themselves the administration of the estate.

The Statute of Limitations, as to all the profits, excepting those which may have accrued within the last six years, will be a defence. The damages may be beyond the mere rent or annual value of the premises, as compensation for the plaintiff's trouble, &c.; but ground-rent paid by the defendant will be deducted by the jury from the damages: and if less than 40*s.* damages be recovered, unless the Judge certify, the plaintiff shall have no more costs than damages. If the action is brought pending error, execution will be stayed until the writ of error is determined. In other respects the action is the same as in ordinary proceedings. *Selw. Nisi Prius*, tit. *Ejectment*; *Adams on Ejectment*; *Chit. Arch. Prac.* 730; *Woodf. Land. and Tenant*, chap. vii.; *Runn. Hist. Princ. and Prac. of Ejectment*.

EJECTUM, jet, jetsom, wreck, &c.

EIGNE [*uisné*, Fr.], eldest, or first-born.

EIK *to a reversion*, an additional loan to a mortgagor, who is the reversioner of the mortgaged estate; also *to a testament*, an addition to an inventory made up by an executor. *Scotch Term*.

EINECIA, eldership. See ESNECY.

EIRE, or EYRE [*eire*, Fr., *iter*, Lat.], the court of justices itinerant, and justices in eyre. They were, anciently, sent with a general commission into divers counties to hear such causes as are termed pleas of the Crown; and this was done for the ease of the people, who must else have been hurried to the King's Bench, if the cause were too high for the county court: it is said they were sent but once in seven years. The

eyre of the forest is the justice seat; which, by an ancient custom, was held every three years by the justices of the forest, journeying up and down for that purpose. *Bract.*, l. 3, c. 11.

EJURATION, renouncing or resigning one's place. *Encyc. Lond.*

Ejus est periculum cujus est dominium—aut commodum.—(He who has the risk has the dominion or advantage.)

EJUSDEM GENERIS (of the same kind or nature).

Electio est interna, libera et spontanea separatio unius rei ab aliâ, sine compulsione, consistens in animo et voluntate. Dyer, 281.—(Choice is an internal, free, and spontaneous separation of one thing from another, without compulsion, consistent in mind and will.)

Electio semel facta, et placitum testatum non patitur regressum. Co. Lit. 146.—(Election once made, and plea witnessed, suffers not a recall.)

ELECTION, the act of selecting one or more from a greater number for any use or office; also when a man is left to his own free will to take or to do one thing or another, which he pleases.

The doctrine of election, strictly so called, is derived from the civil law, and is the obligation imposed upon a party to choose between two inconsistent or alternative rights or claims, in cases where there is a clear intention of the person from whom he derives one, that he should not enjoy both. Every case of election, therefore, presupposes a plurality of gifts or rights, with an intention, expressed or implied, of the party who has a right to control one or both, that one should be a substitute for the other. The party who is to take, has a choice, but he cannot enjoy the benefits of both. It has been said that the doctrine constitutes a rule of law, as well as of equity; and that the reason why courts of equity are more frequently called upon to consider the subject, is, that in consequence of the forms of proceeding at law, the party cannot be put to elect. 2 *Story's Equity Jurisp.*, chap. xxx.

As to a defendant in equity compelling a plaintiff to elect between two proceedings, it is ordered by the 20th and 21st clauses of the 16th of the Orders, 8th May, 1845, that a defendant whose answer is not excepted to or referred back on former exceptions, alleging that the plaintiff is prosecuting him in this court and also at law for the same matter, may, upon the expiration of eight days after his answer or further answer is filed, obtain, as of course, on motion or petition, the usual order for the plaintiff to make his election in which court he will proceed. And that a defendant whose answer is excepted to or referred back on former exceptions, alleging that the plaintiff is prosecuting him in this court and also at law for the same matter, may by notice in writing require the plaintiff to procure the Master's report upon the exceptions within

four days from the service of the notice. And if the plaintiff do not obtain the Master's report within such four days, such defendant is entitled as of course, on motion or petition, to obtain the usual order for the plaintiff to make his election in which court he will proceed.

But though it is a general rule that when a party is suing in equity he shall not be allowed to sue at law for the same thing, yet the case of a mortgagee forms an exception, he having a right to proceed in equity and at law at the same time, nor will the court stay the proceedings at law, unless the defendant brings in the money. *Rees v. Parkinson*, 2 Anst. 497.

As to the election of members of Parliament, see *Wordsworth's Law and Practice of Elections*. The manner of proceeding on election petitions is regulated by 4 & 5 Vict., c. 58.

Electiones fiant ritè et liberè sine interruptione aliquâ. 2 Inst. 169.—(Let elections be made rightly and freely, without any interruption.)

ELECTOR, he that has a vote in the choice of any officer; a constituent; also such German princes as formerly had a voice in the election of the Emperor of Germany.

ELEEMOSYNA, alms.

ELEEMOSYNA REGIS, and **ELEEMOSYNA ARATRI**, or **CARUCARUM**, a penny which King Ethelred ordered to be paid for every plough in England towards the support of the poor. *Leg. Ethel.*, c. 1.

ELEEMOSYNÆ, the possessions belonging to the church. *Blount*.

ELEEMOSYNARIA, the place in a religious house where the common alms were deposited, and thence by the almoner distributed to the poor.

ELEEMOSYNARIUS, the almoner or peculiar officer, who received the rents and gifts, and in due method distributed them to pious and charitable uses.

ELEEMOSYNARY CORPORATIONS, artificial bodies constituted for the perpetual distribution of the free alms or bounty of the founder of them to such persons as he has directed. Of this kind are all hospitals for the maintenance of the poor, sick, and impotent, and all colleges both in our universities and out of them, which are founded for the promotion of piety and learning by proper regulations and ordinances, and for imparting assistance to the members of those bodies, in order to enable them to prosecute their devotion and studies with greater care and assiduity. These eleemosynary corporations, though in some things partaking of the nature of ecclesiastical bodies, are, strictly speaking, lay, and not ecclesiastical, even though composed of ecclesiastical persons: and, accordingly, they are not subject to the jurisdiction of the ecclesiastical courts, or to the visitations of the ordinary or diocesan in their spiritual characters. 3 *Step. Com.* 171.

ELEGIT (he has chosen), a judicial writ of execution founded on the Statute of West-

minster II., issuing out of the court where the record or other proceeding is, upon which it is grounded, and addressed to the sheriff, who gives to the judgment creditor the lands and tenements of the judgment debtor, to be occupied and enjoyed until the money due on such judgment is fully paid; during the time he so holds them he is called tenant by *elegit*, whose interest is denominated an estate of freehold, defeasible upon a condition subsequent. His interest, however, is really a chattel, and passes to the executor.

The writ of *elegit* now extends all the debtor's lands, instead of a moiety as before; and also the debtor's customary and copyhold lands, subject to the rights of the lord of the manor; and also lands over which his debtor has any disposing power, which he may, without the assent of any other person, exercise for his own benefit; and also trust estates, estates in reversion, or leases for lives or years, rent charges, lands in ancient demesne, the wife's lands which the husband has during coverture, lands of a bishop, and terms for years. But the following property cannot be extended:—an advowson in gross, because it cannot be valued at any certain rent towards payment of the debt, the glebe belonging to an ecclesiastical benefice; or the churchyard, because these are each *solum Deo consecratum*; a rent-seek, for it cannot be delivered *ut liberum tenementum*; and any tenement that cannot be granted over.

If judgment be obtained against two, and one of them die before execution, the judgment survives as to the personalty, but not as to the realty; that is, the judgment binds the goods of the survivor only, but it binds the lands both of the survivor and the deceased.

Upon the receipt of the *elegit*, the sheriff must impanel a jury, who are to enquire of all the goods and chattels of the debtor, and appraise the same, and also to enquire as to his lands and tenements, and their value; upon such inquisition had, the sheriff is to deliver to the execution creditor all the goods and chattels of the debtor (except his oxen and beasts of the plough) at the value set upon them by the jury; and if the goods be sufficient to satisfy the debt, the lands cannot be extended. If, however, the goods be insufficient, the sheriff is to proceed to make and deliver execution to the execution creditor, of all the lands, &c., of the debtor, and must return the writ, in order that the inquisition may be recorded in the court out of which the *elegit* issued. The 5 & 6 Vic., c. 98, abolished poundage on this writ.

If no land be extended upon an *elegit*, the plaintiff may, of course, have an *elegit* into another county; or even if lands be extended upon the first *elegit*, the plaintiff, on a suggestion that the defendant has more lands, either in the same or in another county, may have another *elegit*. But where

land is extended under an *elegit*, no other writ of execution but an *elegit* can be sued out against the defendant, unless the plaintiff be evicted from the lands extended, or the *elegit* be ineffective or void.

The sheriff delivers only legal possession of the lands, or rather a right of entry, and not actual possession; if, therefore, the execution creditor cannot enter without force, he should proceed by ejectment. As soon as the plaintiff shall have fully satisfied his judgment out of the extended value of the land, the defendant may recover his land, either by ejectment, *sci. fa.*, *ad rehabendam terram*, bill in equity, or reference to one of the Masters of the court to ascertain the amount of the rents and profits received, and order that, if it appear that the debt, &c., is satisfied, possession shall be delivered to the defendant. *Chit. Arch. Prac.* 440.

ELIMINATION, the act of banishing, or turning out of doors; rejection.

ELINGUATION, the punishment of cutting out the tongue.

ELISORS, electors; chosen persons. In cases of challenge to the sheriff and coroners for partiality, &c., the *venire* to summon a jury is directed to two clerks of the court, or two persons of the county named by the court, and sworn. Then these *elisors* indifferently name or choose the jury, and their return is final, no challenge being allowed to their array. *Co. Lit.* 158.

ELOIGNE, or **ELOINE** [*eloigner*, Fr.], to put at a distance; to remove one far from another.

ELOIGNMENT, re-motion; sent a great way off.

ELONGATA, a return made by a sheriff in replevin, that cattle, &c., are not to be found, or are removed, so that he cannot make deliverance, &c.

ELONGATUS, a return to a writ *de homine replegiando*, that the man is out of the sheriff's jurisdiction, whereupon a process is issued, called a *capias in withernam*, to imprison the defendant himself without bail or main-prize, until he produces the party.

ELOPEMENT, the voluntary departure of a wife from her husband, to live with an adulterer, and with whom she lives in breach of the matrimonial vow.

ELUL, the twelfth month of the Jewish civil year, and the sixth of the ecclesiastical. It consisted of only twenty-nine days, and answered nearly to our August.

ELY [perhaps from *ēlos*, Gk., a marsh, or *helig*, C. Br., a willow], the ancient city and metropolis of the county of Cambridge.

The Isle of Ely was never a county palatine, but it was a royal franchise, which, however, by 6 & 7 Wm. IV., c. 87, was taken away from the bishop, whose secular authority is now vested in the Crown.

EMBARGO [*embargar*, Span.], a prohibition upon shipping not to go out of any port on a war breaking out, &c.; to detain; a stop put to trading vessels.

EMBASSADOR. See **AMBASSADOR**.

EMBASSAGE, or EMBASSY, a public message concerning business.

EMBEZZLEMENT, larceny by clerks, servants, or agents. The act of appropriating to himself that which is received in trust for another. 7 & 8 Geo. IV., c. 29, § 47. The distinctions between larceny and embezzlement are often extremely nice and subtle; and it is sometimes difficult to say under which head the offence ranges. The offender must be a clerk or servant, whose business it is to receive money for his master, to be guilty of embezzlement. But if he have been employed to receive it in a single instance, he needs not be a general servant. And where a servant is sent to do a particular thing, for which he is to receive a specified sum, and not less, and he is paid a less sum, and appropriate it, this is not an embezzlement, for he does not receive the money by virtue of his employment. 4 C. & P. 390.

If a banker, merchant, factor, broker, attorney, or other agent, embezzle money, or securities for money entrusted to them, they are respectively guilty of an indictable misdemeanour; but it is expressly provided that that enactment shall not affect trustees or mortgagees, or extend to bankers disposing of any lien; and it is expressly enacted that those provisions, as to all such agents, shall not lessen any civil remedy which the party aggrieved would otherwise have. So that a prosecution and also an action might be sustained at the same time against the agent and his sureties. But these provisions only apply to embezzlements in case of a regular employment, in the capacities enumerated, and do not extend to a person gratuitously engaging, on a particular occasion, to procure the discount of a bill, not being in any business within which such an employment regularly falls. 7 & 8 Geo. IV., c. 29, §§ 49, 50, 52.

EMBLEMENTS [*emblavance de bled*, Fr., corn sprung or put above ground], the growing crops of those vegetable productions of the soil which are annually produced by the labor of the cultivator. They are deemed personal property, and pass as such to the executor or administrator of the occupier, whether he were the owner in fee, or for life, or for years, if he die before he has actually cut, reaped, or gathered the same; and this, although these being affixed to the soil, might for some purposes, be considered, whilst growing, as part of the realty.

If a tenant for life or *pur auter vie* die, his executor is entitled to emblements, for the estate was determined by the act of God; and it is a maxim in the law that *actus Dei nemini facit injuriam*. The advantages of emblements are extended to parochial clergy by 28 Hen. VIII., c. 11, but a parson who resigns his living, or forfeits by his own act, is not entitled to emblements, although his lessee is. By devise, the devisee may, without express words, be entitled to the growing crops. But a legatee of the goods,

stock, and moveables on a farm, is entitled to growing corn in preference as well to the devisee of the land as to the executor. So, a tenant at will or sufferance, the duration of whose tenancy is uncertain, is, if the lessor suddenly determine the tenancy, entitled to emblements. And at common law, *fructus industriales*, as growing corn and other annual produce, which would go to the executor upon death, may be taken in execution; but the appraisement and sale thereof are regulated by statute; and, by statute, growing crops may be distrained upon, and sold when ripe. But a crop of natural grass growing at the time of the death of a tenant for life or in fee, and although fit to cut for hay, does not belong to his executor, but goes to the remainderman. A landlord is entitled to emblements or growing crops, in case of forfeiture by the tenant's own acts, and so is a mortgagee. *Chit. Gen. Prac.* vol. i., p. 91.

EMBLERS DE GENTZ [Fr.], a stealing from the people. The phrase occurs in our old rolls of Parliament:—Whereas divers murders, *emblers de gentz*, and robberies are committed, &c. *Rot. Parl.*, 21 Edw. III. s. 62.

EMBRACEOR [*embrasour*, Fr.], he that, when a matter is in trial between party and party, comes to the bar with one of the parties, having received some reward so to do, and speaks in the case; or privately labors the jury, or stands in the court to survey and overlook them, whereby they are awed or influenced, or put in fear or doubt of the matter. 19 Hen. VII., c. 13. But counsel, attornies, &c., may speak in the case for their clients and not be embraceors.

EMBRACERY, an attempt to influence a jury corruptly in favor of one party in a trial, by promises, persuasions, entreaties, money, entertainments, and the like. The punishment for this misdemeanour in the person embracing and the juror embraced is by the common law, and also by statute 6 Geo. IV., c. 50, § 61, fine and imprisonment.

EMBRING DAYS [*embers, cineres*, Lat., because our ancestors, when they fasted, sat in ashes, or strewed them on their heads], those days which the ancient fathers called *quatuor tempora jejunii*, and of great antiquity in the church; they are observed on Wednesday, Friday, and Saturday next after Quadragesima Sunday, or the first Sunday in Lent, after Whitsuntide, Holyrood-day in September, and St. Lucy's-day, about the middle of December. *Brit.*, c. 53. Our almanacks call them the Ember-weeks, which are now chiefly noticed on account of the ordination of priests and deacons; because the canon appoints the Sundays next after the Ember-weeks for the solemn times of ordination; though the bishops, if they please, may ordain on any Sunday or holiday. *Encyc Lond.*

EMENDALS, an old word still made use of in the accounts of the society of the Inner Temple; where so much in *emendals* at the

foot of an account, on the balance thereof, signifies so much money in the bank or stock of the houses, for reparation of losses, or other emergent occasions. *Spelm.*

EMENDARE, to make amends for any crime or trespass committed. And a capital crime, not to be atoned by fine, was said to be *in-emendabile*. *Leg. Canst.* 2.

EMENDATIO, the power of amending and correcting abuses, according to stated rules and measures.

EMERGENT YEAR, the epoch or date, whence any people begin to compute their time. Our emergent year is sometimes the year of the creation, but more usually the year of the birth of Christ. See CALENDAR.

EMINENCE, an honorary title given to cardinals. They were called *illustrissimi* and *reverendissimi* until the pontificate of Urban VIII.

EMISSARY, a secret agent sent to ascertain the sentiments and designs of another, and to propagate opinions favorable to his employer.

EMPALEMENT, the kind of punishment in which a sharp pole was thrust up the fundament. *Encyc. Lond.*

EMPANNEL [*panne*, Fr.], the writing or entering the names of a jury into a parchment schedule, or roll of paper, by the sheriff, which he has summoned to appear for the performance of such public service as juries are employed in. *Cowell.*

EMPARLANCE. See IMPARLANCE.

EMPEROR [*empereur*, Fr., *imperator*, Lat.], the highest ruler of large kingdoms and territories; a title anciently given to renowned and victorious generals of armies, who acquired great power and dominion. And this title is not only given to the Emperor of Germany, as Emperor of the Romans, but was formerly belonging to the Kings of England, as appears by a charter of King Edgar. It was also a title taken by the early kings of France. The sovereigns of the Russian and Austrian empires are denominated emperors. *Encyc. Lond.*

EMPHYTEUTA, or EMPHYTEUTES, a tenant who rents land on condition of planting it. *Ibid.*

EMPIRE, imperial power; supreme dominion; sovereign command.

EMPLEAD, to indict; to prefer a charge against; to accuse.

EMPORIUM [*τὸ ἐμπόριον*, Gk.], a place for wholesale trade in commodities carried by sea. The name is sometimes applied to a sea-port town, but it properly signifies only a particular place in such a town. The word is derived from *ἐμπορος*, which signifies in Homer, a person who sails as a passenger in a ship belonging to another person (*Od.* ii. 319; xxiv. 300); but in later writers it signifies the merchant or wholesale dealer, and differs from *κἀπηλος*, the retail dealer, in that it is applied to the merchant who carries on commerce with foreign countries, while the *κἀπηλος* purchases his goods from the *ἐμπορος*, and retails them in the market-place. *Smith's Dict. of Antiq.*

EMPTION, the act of buying; a purchase.

EMPTURE, bought, hired. *Scott.*

ENABLING STATUTE, 32 Hen. VIII., c. 28, A. D. 1540. By the common law, all persons may make leases to endure so long as their interest in the land continues, but no longer. This statute enabled first a tenant in tail to make a lease for three lives, or twenty-one years, to bind his issue. Secondly, a husband seised in right of his wife in fee-simple or fee-tail, to make a similar lease to bind his wife and her heirs, provided she join therein. Thirdly, ecclesiastical persons seised of an estate of fee-simple in right of their churches (not parsons or vicars who are seised for life only), to make leases to bind their successors. But certain requisites must be observed in making those leases. *2 Bl. Com.* 219. There are other enabling statutes:—55 Geo. III., c. 147; 56 Geo. III., c. 52; 56 Geo. III., c. 141; 39 & 40 Geo. III., c. 41, by which latter act ecclesiastical lands may be let in parts, so that the aggregate rents amount to the old reservation.

ENACH, the satisfaction for a crime; the recompence for a fault. *Scotch Term.*

ENACT, to act, perform, or effect; to establish by law; to decree.

ENBREVER, to write down in short. *Brit.* 56.

ENCAUSTUM. See INCAUSTUM.

ENCEINTE, big with child.

ENCHEASON [old law Fr.], cause; occasion. *Skin.; Cowell; Bailey.*

ENDENIZE, or ENDENIZEN, to make free; to enfranchise.

ENDITE. See INDITE.

ENDORSEMENT, superscription; writing on the back; ratification.

ENDOWMENT, wealth applied to any person or use. The assuring dower to a woman; the setting forth a sufficient portion for a vicar towards his perpetual maintenance, when the benefice is appropriated. *Cowell.*

En eschange il convient que les estates soient égales. Co. Lit. 50.—(In an exchange it is necessary that the estates be equal.)

ENFEOFFMENT, the act of investing with any dignity or possession; also the instrument or deed by which a person is invested with possessions.

ENFRANCHISE, to make free, or incorporate a person in a society, &c.

ENFRANCHISEMENT, investiture of the privileges of a denizen; also the act of incorporating a person into a society.

As to enfranchisement of copyholds, see COPYHOLD.

ENGLAND [*eng*, Teut., narrow, strait, a nook]. Verstegan, in p. 147 of his "*Restitution of Decayed Intelligence in Antiquities*," quaintly observes as follows:—"To come now unto the cause of the general calling of our ancestors by the name of Englishmen, and our country consequently by the name of England, it is to be noted, that the seven petty kingdoms of Kent, South Saxons, East English, West Saxons, East Saxons, Northumbers, and Mercians,

came in fine one after another by means of the West-Saxons, who subdued and got the sovereignty of all the rest to be all brought under one monarchy under King Egbert, King of the said West-Saxons. This king then, considering that so many different names as the distinct kingdoms before had caused were no more necessary, and that as the people were all originally of one nation, so was it fit they should again be brought under one name; and although they had had the general name of Saxons, as unto this day (1605) they are of the Welsh and Irish called, yet did he rather choose and ordain that they should be all called *Englishmen*, as but a part of them before was called, and that the country should be called *England*. To the affectation of which name of Englishmen, he should seem he was chiefly moved in respect of Pope Gregory, his alluding the name of *Engelisce* unto *Angellyke*. The name of *Engel* is yet at this present in all the Teutonic tongues, to wit, the high and low duitsh, &c., as much to say as *Angel*, and if a Dutchman be asked how he would in his language call an *Angellykeman*, he would answer *ein Engelsch-man*, and being asked how in his own language he would or doth call an Englishman, he can give no other name for him, but even the very same that he gave before for an *Angellykeman*, that is, as before is said, *ein Engelsch-man*; *Engel* being in their tongue an *Angel*; and *English*, which they write *Engelsche*, *Angellyke*. And such reason and consideration may have moved our former kings, upon their best coin of pure and fine gold, to set the image of an angel, which may be supposed has as well been used before the Roman conquest as since.

“ Thus the name generally of Saxons was by the ordinance of noble King Egbert, about the year of our Lord 800, brought into the general name of Englishmen, which being a name of such glory, as the derivation sheweth it, ever may they with all encrease of honor therein continue.

“ The country was accordingly called *Engaland*, and by abbreviation *England*, a name which well accords unto two significations, for first it seems to have had it by reason of the English people, whose land it now was; and secondly, in regard of the form or fashion thereof, for that it grows unto a narrowness both towards the north and towards the west: the name of the first, or old England, whereof before I have spoken, having risen (as most apparently it seemeth) for like cause and reason of the straightness or narrowness thereof.”

ENGLECRY, or ENGLSCHIRE [*Engleria*, Lat.], the being an Englishman. 14 *Edw. III.*, st. 1, c. 4.

ENGROSSER, he that purchases large quantities of any commodity, in order to sell it at a high price. 7 & 8 *Vict.*, c. 24.

ENICIA PARS. See **ESNECY**.

Enitia pars semper præferenda est propter privilegium ætatis. Co. Litt. 166.—(The part

of the elder sister is always to be preferred, on account of the privilege of age.)

ENLARGER L'ESTATE, a species of release which enures by way of enlarging an estate, and consists of a conveyance of the ulterior interest to the particular tenant; as if there be tenant for life or years, remainder to another in fee, and he in remainder releases all his right to the particular tenant and his heirs, this gives him the estate in fee. 1 *Step. Com.* 480.

ENLARGING STATUTES. See **ACT OF PARLIAMENT**.

ENPLEET, anciently used for implead.

ENQUETS. See **INQUEST**.

ENQUIRY. See **INQUIRY**.

ENROLMENT, register, record; writing in which anything is recorded.

By the Statute of Enrolments, 27 *Hen. VIII.*, c. 16, every bargain and sale of a freehold interest is to be enrolled in Chancery within six [lunar] months after its date.

No assurance by a tenant in tail, under the 3 & 4 *Wm. IV.*, c. 74, will have any operation unless it be enrolled in the Court of Chancery, within six calendar months after its execution, which enrolment will be sufficient of itself, even where the conveyance is by bargain and sale, within the Statute of Enrolments. This provision does not extend to copyholds, the enrolment then being on the court rolls of the manor. As to the enrolment of annuities, see **ANNUITY**.

If a party to a suit in equity, who has obtained a decree or order, is desirous of preventing a rehearing of the cause before the Judge pronouncing the same, or of preventing an appeal to the Lord Chancellor, it must be enrolled. So also where a decree is pronounced either by the Master of the Rolls, or one of the Vice Chancellors, and the party, instead of appealing to the Lord Chancellor, is desirous of appealing at once to the House of Lords, the decree must first be enrolled. The effect of enrolling a decree of the Lord Chancellor, is to prevent its being reheard by him. After a decree is enrolled, it can only be reversed or altered either by appeal to the House of Lords or by bill of review. It may be enrolled immediately after it has been passed and entered, unless a caveat have been entered, and then, if the party entering it does not present his petition of appeal or rehearing within twenty-eight days, the enrolment may be perfected. The order of 17th March, 1843, diminished expenses of enrolment of decrees and orders: and the ninety-first of the Orders, 8th May, 1845, gave the defendant power to vacate under certain circumstances. The enrolment may be vacated generally where the merits have not been gone into, or the decree was obtained and enrolled through the neglect of the opposite solicitor, or where it was obtained by surprise.

ENS, being, or existence.

ENSCHEDULE, to insert in a list, account, or writing.

ENSIENT, or ENSEINT, pregnancy.

ENTAIL [*fendum talliatum*, Lat., *entailé*, Fr., from *tailler*, to cut], an estate settled with regard to the rule of its descent. See TAIL.

ENTAILED MONEY. 3 & 4 Wm. IV., c. 74, §§ 70, 71, 72. See TAIL.

ENTENDMENT. See INTENDMENT.

ENTERING SHORT. When bills are paid into a banker's hands to receive the amount when due, this is what is called "entering them short;" and although the banker may endorse them away for a valuable consideration, yet, if he fail with them in his hands, the assignees must give them up, or the amount, if received, deducting of course any set-off. And bills in the hands of a factor are subject to the same rules. *Johnson on Bills*, 58.

ENTERPLEADER. See INTERPLEADER.

ENTIERTY [*entierté*, Fr.], the whole, and not barely a part.

ENTIRE TENANCY, a sole possession by one person, called severalty, which is contrary to several tenancy where a joint or common possession is in one or more.

ENTIRETIES, *tenancy by*, where an estate is conveyed or devised to a man and his wife *during coverture*, they are said to be tenants by entireties, that is, each is said to be seised of the *whole estate*, and neither of a part. The consequence is, that the husband's conveyance alone will not have any effect against his wife's surviving. The husband being seised of the whole estate during coverture, either in his own right or *jure uxoris*, can of course depart with that interest; but to make a complete conveyance of all the interests held in entirety, the wife must concur. Tenants by entireties are seised *per tout*, and not *per my et per tout*. This species of tenancy seems to be an exception to the rule, that the husband and wife are one person in law; if they are to be considered as one person, the husband should be able to convey alone, which he is not enabled to do. *Watkin's Conv.* 170.

ENTIRETY, completeness.

ENTREPOT [Fr.], a warehouse or magazine for the deposit of goods.

ENTRY, actual entry on land is necessary to constitute a seisin in deed, and is necessary in certain cases, as to perfect a common law lease, for instance.

When a person without any right has taken possession of land, the party entitled may make a formal but peaceable entry, which is quite an extrajudicial and summary remedy, on such lands, declaring that thereby he takes possession, which notorious act of ownership is equivalent to a feudal investiture by the lord; or he may enter on any part of it in the same county, declaring it to be in the name of the whole; but if it lie in different counties, he must make different entries for the notoriety of such entry and claim. This remedy by entry takes place in three only of the five species of ouster—viz., abatement, intrusion,

and disseisin; for as in these the original entry of the wrongdoer was unlawful, they may therefore be remedied by the mere entry of him who has right. But upon a discontinuance or deforcement, the owner of the estate cannot enter, but is driven to his action; for herein the original entry being lawful, and thereby an apparent right of possession being gained, the law will not suffer that right to be overthrown by the mere act or entry of the claimant. 1 *Inst.* 57.

An action must be brought within twenty years next after a right of entry first accrued, ten years being allowed after disabilities, provided it be not more than forty years in the whole. No continual or other claim upon or near any land shall preserve any right of making an entry or distress, or of bringing an action. No descent cast which may happen or be made after the 31st December, 1833, shall toll or defeat any right of entry or action for the recovery of land. All writs of entry and real actions by which lands might have been formerly recovered, are now, except dower, dower *unde nihil habet*, and *quare impedit*, abolished. 3 & 4 Wm. IV., c. 27.

In Scotch law, it refers to the acknowledgment of the title of the heir, &c., to be admitted by the superior.

As to a burglarious entry, see BURGLARY.

In commerce, the act of setting down in an account-book the particulars of trade. Book-keeping is performed either by single or double entry.

ENTRY, BILL OF. See BILL OF ENTRY.

ENURE, to take place or be available.

ENVOY, a public minister sent from one power to another.

Eodem modo quo quid constituitur, eodem modo destruitur. 6 Co. 53.—(In the same way in which anything is constituted, in that way is it destroyed.)

EODORBRICE [*eoder*, Sax., a hedge, and *brice*, broken], hedge-breaking. *Leg. Alf.* c. 45.

EORL [its etymon is unknown, one deriving it from *dr, O, N*, minister, satellite; another from *jara*, battle. See *B. Hald.* voce *Jarl*, and the gloss. to *Sæmund's Edda*, t. i. p. 597]. This title, which seems to have been introduced by the Jutes of Kent, occurs frequently in the laws of the kings of that district, the first mention of it being in Ethb. 13. Its more general use among us dates from the later Scandinavian invasions; and though originally only a title of honour, it became in later times one of office, nearly supplanting the older and more Saxon one of 'ealdorman.' *Anc. Inst. Eng.*

EOTH, an oath.

EPIMENIA, expences or gifts. *Blount.*

EPIPHANY [*ἐπι* and *φαίνω*, Gk., to appear], a Christian festival, otherwise called the Manifestation of Christ to the Gentiles, observed on the 6th of January, in honour of the appearance of the star to the three magi or wise men, who came to adore the Mes-

siah, and bring him presents. It is commonly called Twelfth-Day. *Encyc. Lond.*

EPISCOPACY [*ἐπισκοπος*, Gk.], the office of overlooking or overseeing; the office of a bishop who is to overlook and oversee the concerns of the church. A form of church government by diocesan bishops.

EPISCOPALIA, or **ONERA EPISCOPALIA**, synodals or other customary payments from the clergy to their bishop or diocesan, which were formerly collected by the rural deans, and by them transmitted to the bishop. *Mon. Ang.*, t. iii. p. 61.

EPISCOPUS PUERORUM. It was an old custom that some lay person about a certain feast should plait his hair, and put on the garments of a bishop, and in them exercise episcopal jurisdiction, and do several ludicrous actions, for which reason he was called *bishop of the boys*: and this custom obtained here long after several constitutions were made to abolish it. *Blount*.

EPISCOPATE, a bishopric.

Episcopus alterius mandato quam regis non tenetur obtemperare. Co. Lit. 134. — (A bishop needs not obey any mandate save the king's.)

Episcopus teneat placitum, in curia Christianitatis, de iis quæ merè sunt spiritualia. 12 Co. 44. — (A bishop may hold plea in a court Christian, of things merely spiritual.)

EPOCH, or **EPOCHA** [*ἐπὶ* and *ἐξω*, Gk., to hold], the time at which a new computation is begun; the time whence dates are numbered. *Encyc. Lond.*

EQUERRY, an officer of state under the master of the horse.

EQUITABLE ESTATES, one of the three kinds of property in lands and tenements; the other two being legal property and customary property.

That is properly an equitable estate or interest, for which a court of equity affords the only remedy: and of this nature, especially, is the benefit of every trust, express or implied, which is not converted into a legal estate by the Statute of Uses. The rest are equities of redemption, constructive trusts, and all equitable charges. *Burton's Comp. chap. viii.*

EQUITABLE MORTGAGE. Notwithstanding the Statute of Frauds, a mere deposit of title deeds upon an advance of money, with or without a written memorandum of the purpose of the deposit, gives an equitable lien; and such deposit will cover subsequent advances, if it appear by clear evidence that they were made upon the faith of that security, or rather that the original deposit was continued with an agreement for a further advance. It seems not to have been decided whether it is necessary to deliver *all* the title deeds, or whether that would not be deemed to be a sufficient deposit, which could be taken, upon looking at the instruments, to amount to evidence that the estate was meant to be a security. The meaning and object of a mere deposit may be explained by parol evidence.

A deposit of one deed, with a promise to deposit all, gives no equitable lien. There are conflicting decisions as to the effect produced by a deposit of title deeds, for the purpose of preparing a legal mortgage; and while some of the Judges have held that no equitable interest passes by such a deposit, Lord Eldon and others have considered such a circumstance as the strongest evidence of an intention to charge the property, and ruled accordingly upon this ground, that as the principle of equitable mortgages is, that the deposit of the deeds is evidence of the agreement, a deposit for the express purpose of preparing a legal mortgage is yet stronger evidence of the intention, and this *dictum* of the learned Judge will, no doubt, be sustained. *Ex parte Bruce*, 1 Rose, 374.

Where a debtor deposits a title deed with his creditor, as security for a debt, the interest which the creditor thereby acquires in the deed, may be assigned by him to a third person. This has been so held by Mr. Baron Rolfe, who, on this point arising at *Nisi Prius*, told the jury "that it was his opinion, if the deed had been deposited in the hands of a banking company, by way of security for a debt, they thereby acquired an interest larger than that of a mere lien. In the case of an ordinary lien, the depositor has not, nor is intended to have, the property in the thing deposited; but when a title deed is deposited, the depositor has not only an equitable interest in the estate, but a right to call for a legal mortgage, and that right he can transfer to another in the same way that it was vested in himself, namely, by deposit of the title deeds. *Hobson v. Mellored*, 2 Moo. & Rob. 342; *Ex parte Smith*, 1 Ves. & B. 518.

An agreement to deposit deeds, without an actual deposit, confers no lien; so of a written charge upon lands, if retained by the debtor; and in an action of trover to recover title-deeds, it was decided, that a deposit of title-deeds by a settlor, subsequently to a voluntary settlement, will not prevail at law against the settlement, the court pointing out the distinction between a purchaser protected by 30 *Eliz.*, c. 18, and a depositary who has merely a right to go into a court of equity for a legal conveyance. *Ex parte Combe*, 4 Mad. 249; *Ex parte Coming*, 9 Ves. 115; *Kerrison v. Dorrien*, 9 Bing. 76.

A deposit of his lease by a debtor, is not a breach of a covenant against assignment, unless strictly prohibited; and a creditor with whom such a deposit is made, is not liable to the rents and covenants unless he enter into possession, or do some other act which may induce a court of equity, at the suit of the lessor, to compel him to take a legal assignment, when, of course, he would be liable at law to pay the rent and perform the covenants.

A deposit of title-deeds ranks itself under the fourth class of bailments, enumerated by Lord Holt in his elaborate judgment in *Coggs v. Bernard*, Lord Raym. 909, viz.,

"Vadium;" and the depositary is only bound to use ordinary care and diligence in the keeping of the deposit, he still having recourse to the depositor for his debt, though the subject of the deposit (the title-deeds) be lost.

Equitable mortgages have been resorted to for these two reasons, one to avoid expense and to prevent the appearance of a mortgage and reconveyance on the face of the title at a subsequent period; the other from the supposition that a simple deposit of title-deeds effects a valid charge upon the property; but it is to be observed, that the debtor may dispose of the property (securely mortgaged as the mortgagee imagines) the very next day, to an innocent purchaser or mortgagee, for valuable consideration, without notice of the existing incumbrance.

A written memorandum, accompanying the deposit, should always be made, as it not only prevents all questions as to the object of the parties, but it should contain a clause expressive of an intention to charge the property, not merely with the advance then or theretofore made, but also with all subsequent advances; in the absence of such a clause, and for want of evidence to show that a security for future advances was contemplated, the deposit will be construed as a security only for the debt due or the money advanced at the time of the transaction; and if the deposit be made to cover future advances by a firm, the memorandum should clearly express an intention that the deposit shall operate as a security for all advances which may thereafter be made by the future member or members, for the time being, of the firm. Silence on this point may cause the transaction to be held as a security for advances made only by the immediate parties to the deposit; and should the firm with whom the deeds are pledged take another partner, or should one of the partners die, and subsequent advances be made on the faith of the existing security, it is, to say the least, very questionable whether the deposit would be considered as extending to such future advances. Much litigation has taken place upon this question, and the leaning of the courts seems to be against the extension of the security to such last mentioned advances, in the absence of evidence to the contrary. In case the mortgagor become bankrupt, and the mortgagee apply in the usual manner, by petition, to the Court of Bankruptcy, for a sale of the property, and payment of his debt out of the produce, he is, if the circumstance of the deposit be evidenced by writing under the mortgagor's hand, entitled to the costs of his application to the court, but not otherwise; and any writing, however informal, will satisfy the court.

An equitable mortgagee may, through the medium of the Court of Chancery, obtain either an absolute conveyance and foreclosure, or a sale of the property. If the latter alternative be adopted, and the estate should

not realise the amount secured upon it, the mortgagee will then be regarded in the light of a general creditor, as respects the balance due to him. 1 *Madd. Prin. Chan.* 674.

EQUITY [*Æquitas*], a department of the general system of our laws; one of the great divisions of English jurisprudence. It is said to have arisen out of the peculiar and unbending severity of the common law, and to have relieved, after investigating the influences of accidents or frauds, in those cases where a strict interpretation at common law (not regarding such influences) would have produced injustice. A few instances will suffice to explain these differences. A trustee is put into possession of the trust-property; the common law could not look at him in any other light, than as holding for his own benefit, but equity, regarding the purpose for which he was made a trustee, compelled him to perform such purpose to his employers. The common law Judges decided that a *use could not be raised upon a use*, and that on a feoffment to A. and his heirs, to the use of B. and his heirs, in trust for C. and his heirs, the statute (27 *Hen. VIII.*, c. 10) executed only the first use, and that the second use (*i. e.*, the trust) was a mere nullity, thus rigorously expounding the statute which executes the first use, or, in other words, conveys the possession to the use, by which the *cestui que use* is made complete owner of the lands and tenements at law. Trusts, being thus repudiated by the common law courts, became the "*creatures of equity*," and over them courts of equity exercise an original, peculiar, and exclusive jurisdiction. A trust estate may be described to be a *right in equity*, to take the rents and profits of the lands, whereof *the legal estate is vested in some other person*, to compel the person thus seized of the legal estate (*i. e.*, the trustee) to execute such conveyances of the land as the person entitled to the profits (*i. e.*, the *cestui que trust*) shall direct, and to defend the title to the land: in the meantime the *cestui que trust*, when in possession, is considered, at law, as tenant at will to the trustee.

Again—a deed is lost. The common law courts could not hear anything about what might have been its contents: they must act on the express words of the deed as set before them, and anything beyond they could neither see nor know; as the deed could not be found, its production was impossible, and, therefore, the party must have suffered; but the Court of Equity holds out to him a relief, by compelling a "*discovery*" of the contents of the deed.

Once more—The courts of common law give relief for an injury completed—a mischief already perpetrated, but to prevent, by anticipation, or to stay immediately, any fraud or injustice, they were powerless. But the courts of equity interfere in such cases by *injunction*, without which the benefit of an equity against proceedings at law could

not be had. This power, then, is obviously the most indispensable prerogative of equitable administration.

The origin of this system of equity is quite as obscure as that of the common law, though it is manifestly of a more modern date, seeing that it was introduced to supply the imperfections of the latter. *Æquitas est correctio legis generaliter latæ, quâ parte deficit.* Plow. 375.—(Equity is a correction of the law, when too general, in the part where it is defective.) It was probably some time in operation, as supplementary to the ordinary proceeding at law, before the profession recognised it as a system, and hence no mention is made of it in the earlier law-books. Its origin, however, has been thus stated, and certainly with some plausibility—when an individual had suffered a manifest injury, which the ordinary courts had not the power to remedy, an application for redress was made to the sovereign in person. The king referred the matter to his conscience keeper or chaplain, and his decision was sealed with the king's seal, as a testimony of the royal authority. Hence arose the Lord Chancellor with his Great Seal, whose office has been traced back, by the antiquaries, to the time of Edward the Confessor. The Chancellors were formerly ecclesiastics, they adjusted the equity, and the mode of its administration, according to the principles of the civil law. This was the occasion of the great collision with the common law courts, at the beginning of the seventeenth century, during the time of Lord Ellmere (Lord Bacon's predecessor). The proximate cause of this memorable struggle was this—the Chancellor decided that a court of equity could give relief against a judgment at law: this was violently opposed by most of the great lawyers of that day, and especially by Sir Edward Coke, then the chief of the King's Bench (now called the Queen's Bench). It was at length agreed that a reference should be made to the king (James I.), whose legal notions being derived from the civilians, the courts of equity triumphed, and that decision is now the polar star of these courts.

It is a popular mistake that an equity Judge decides according to an unbounded discretion, "*nunc severius nunc mitius agendo prout viderint expedire*," without regard to strict rules. "There are," says Lord Redesdale (1 Sch. & Lefr. 428), "certain principles on which courts of equity act, which are very well settled. The cases which occur are various, but they are decided on fixed principles. Courts of equity have in this respect no more discretionary power than courts of law. They decide new cases as they arise by the principles on which former cases have been decided, and may thus illustrate or enlarge the operation of those principles; but the principles are as fixed and certain as the principles on which the courts of common law proceed." And if this were not the case, it would be vain to

attempt to systematize the doctrines of Chancery; for what would be the use of principles, if they were of so fluctuating a nature, that Chancellors might regard or disregard them as they thought proper?"

It is a very difficult matter to define equity, and although the text-books contain numberless definitions, or rather descriptions of it, among the best being that of the Great Commentator (3 Comm. 429), yet none of them adequately describe it. It may be defined, or rather described to be a branch of our jurisprudential system, which, although not comprehended in any code, is founded on perfect reason and directed by certain fixed principles, its legitimate aim being to aid the imperfection, to assist the incompetency, or to mitigate the severity of the common law. Equity also regards substance and not ceremony, and therefore suffers no right to be without a remedy. For while courts of law adjudicate *in rem* upon titles completed by actual conveyance, and executes its judgments accordingly, a court of equity adjudicates *in personam* upon the obligations of contract, and decrees a specific performance by the party, and this upon the principle that equity looks on that as done which is to be done.

There are some matters, in which the equity and common law courts have a concurrent jurisdiction, and in some of these matters, it is by far more preferable to resort to the courts of equity for relief. The following instance will illustrate this preferableness:—contribution amongst sureties and defendants may generally be enforced, as well in courts of equity as in courts of law; but in some cases the remedy is more extensive in equity than at law. Suppose there have been three sureties in a bond for 3000*l.*, and an action of debt has been brought against them by the obligee, and the whole has been levied upon one of the defendants, he could, *at law*, only sue one of his co-sureties for his third (1000*l.*), notwithstanding the third surety has become a bankrupt or insolvent; but *equity* would give him a more extensive relief by compelling the solvent surety to contribute the moiety of the entire sum (1500*l.*), thus giving him 500*l.* more than he could have recovered at law.

It has been rightly said that equity differs from law in the mode of *proof*, as when any facts or circumstances rest only in the knowledge of a party to a suit, equity applies itself to his conscience, and by eliciting such knowledge, purges the party upon oath with regard to the truth of the transaction; in the mode of *trial*, which is by written interrogatories administered to the witnesses, whose depositions are taken in writing, wherever they may happen to reside; and in the mode of *relief*, as compelling executory agreements to be carried into strict execution, unless this be improper or impossible, instead of giving damages for their non-performance. It may be also added

that equity differs from law in the mode of its administration; for while the latter is administered upon issues in fact, by a single common law Judge (or in cases under 20l., and no point of law involved, before an undersheriff) and a jury (either special or common), at *Nisi Prius* (unless in the case of a trial at bar, when the cause comes on before four Judges and a jury in *banco*), and upon issues in law, by the Judges in *banco*, without the presence of a jury, the decisions of the former are administered by one Judge, without any jury. Besides, the arguments adduced by council, in support of their case, are calm and serious, appealing to the reason and conscience; while those addressed to juries are florid and extravagant, declaiming to the passions and feelings; the wrangling of the forum is, in equity, superseded by the bland reasoning of the schools; the nice phraseology and acumen of the special pleader by the plain and unsophisticated statement of facts of the equity draughtsman.

The subjects of relief in equity have been distributed under the six following heads:—1st, accident and mistake; 2d, account; 3d, fraud; 4th, infants; 5th, specific performance of agreements; 6th, trusts. Equity has a concurrent jurisdiction with common law as to the three first heads; and an exclusive jurisdiction as to the three last. *Mad. Priu. Chan.; Story's Eq. Jurisp.*

EQUITY OF REDEMPTION. If a person convey lands to another on condition, as a security for money, and the condition be broken, he may, under certain circumstances, redeem the premises; and this privilege is denominated his equity of redemption. Equity considers a mortgage, though in fee, merely as a security for money, till the time of redemption is past. The time is twenty years after the last acknowledgment of it; beyond that time the mortgagor is for ever barred of relief in equity. At law, he has lost the estate by non-performance of the condition; and he loses it in equity by allowing the mortgagee to remain in possession for twenty years, without demanding an account, or obtaining from him some acknowledgment of the existence of the mortgage. *Wat. Conv. 222.*

EQUULEUS, a kind of rack for extorting confessions, at first chiefly practised on criminals, but afterwards made use of against the Christians. It was made of wood, having holes at certain distances, with a screw, by which a criminal was stretched to the third, sometimes to the fourth or fifth hole, his arms and legs being fastened on the equuleus with cords; and thus was hoisted aloft, and extended in such a manner, that all his bones were dislocated. In this state, red-hot plates were applied to his body, and he was goaded in the sides with an instrument called *ungula*. *Encyc. Lond.*

ERA. See *ÆRA*.

ERIACH [Irish], recompence for murder. *Spencer's Ireland.*

ERN [*locus secretus*]. The names of places

ending in *ern*, are said to imply a melancholy situation.

ERRANT [itinerant], applied to justices on circuit, and bailiffs at large, &c. See *EYRE*. **ERRATICUM**, a waif or stray.

ERROR, writ of, an original process issuing out of the common law jurisdiction of the Court of Chancery, in the nature as well of a *certiorari* to remove a record from an inferior to a superior court (excepting in the case of error *coram nobis* or *vobis*) as of a commission to the Judges of such superior court to examine the record, and to affirm or reverse the judgment according to law. The writ is grantable *ex debito justitiæ*, in all cases, except in treason or felony; and, in general, lies for some error or defect in substance, that is not aided, amendable, or cured at common law, or by some of the statutes of amendment or jeofails; and it lies to the same court in which the judgment was given, or to which the record was removed by writ of error, or to a superior court. It must be brought by a party or privy to the record, and prosecuted with effect within twenty years after such judgment signed and entered of record, provided the party against whom the judgment is given be not an infant, *feme covert*, *non compos mentis*, or in prison, or beyond seas; in which cases the writ must be brought within twenty years after such disability ceases. It is usual to issue the writ before judgment signed, in order to prevent execution. By 5 Geo. I., c. 13, all writs of error, wherein there shall be any variance from the original record, or other defect, may and shall be amended and made agreeable to such record by the respective courts where such writs of error shall be made returnable. After the transcript has been returned and filed, the defendant in error may move the court in which the writ of error was returnable, to quash it before some fault not amendable within the 5 Geo. I., c. 13; as for having been returnable for the judgment was given, or that it was sued out against good faith, &c. Costs are payable by the plaintiff in error in all cases, upon quashing a writ of error, unless the writ were rendered defective by the defendant's own acts. 4 Ann., c. 16, § 25. A writ of error abates where the plaintiff in error dies before error assigned, but not after; and the death of a defendant in error does not abate the writ. The death of the chief justice before he has made and signed his return abates this writ; so does the marriage of a feme sole plaintiff, or a feme sole defendant in error, but not bankruptcy. A writ of error in parliament is not abated by a prorogation or dissolution. A new writ may be sued out after an abatement; and a writ of error will be discontinued, if the plaintiff in error make default after errors assigned.

The several writs of errors, and the circumstances under which they are applicable, may be thus classed:—

1. Error from the Queen's Bench, Common Pleas, and Exchequer of Pleas, to the Exchequer Chamber.

This writ is addressed to the chief justice or chief baron of the court in which the judgment was given, and commands him that he send before the Judges, or Judges and Barons, as the case may be, of the two other superior courts of law in the Exchequer Chamber, on a particular day, a transcript of the record, &c. No writ of error shall be a *supersedeas* of execution, until service of the notice of the allowance thereof by one of the Masters of the court in which the judgment was given, containing a statement of some particular ground of error intended to be argued: provided, that if the error stated in such notice shall appear to be frivolous, the court or a Judge, upon summons, may order execution to issue. *H. T., 4 Wm. IV., r. 9.* Bail in error is necessary where the judgment is for the plaintiff in any personal action, whether after verdict or default, unless it be otherwise ordered by the court or a Judge; but a party, who is plaintiff both below and above, need not give bail. If the writ of error is allowed *before* the judgment is signed, the plaintiff in error has four clear days, after the signing of the judgment, to put in bail; but if the writ be sued out *after* judgment, the plaintiff in error has four clear days to put in bail from the time of the allowance of the writ. Unlike any other bail, bail in error cannot render their principal in discharge of their liability, but must, in the event of his not paying, pay the amount recovered, with costs. No rule to certify or transcribe the record is necessary, but the plaintiff in error shall, within twenty days after the allowance of the writ of error, get the transcript of the record prepared and examined, with one of the Masters of the court in which the judgment is given, and pay the transcript money to him; in default thereof, the defendant in error, his executors or administrators, shall be at liberty to sign judgment of *non pros.* On this transcript being made out and left with the Master, the cause is removed into the Exchequer Chamber, and all the future proceedings, to the judgment to be pronounced on the writ of error, must be had in that court. No rule to allege diminution, nor rule to assign errors, nor *scire facias quare executionem non*, shall be necessary, in order to compel an assignment of errors; but within eight days after the writ of error, with the transcript annexed, shall have been delivered to one of the Masters of the court in which the original judgment was given, or within twenty days after the allowance of the writ of error, in cases of error *coram nobis*, or *coram vobis*, the plaintiff in error shall assign errors, and in failure to assign errors, the defendant in error, his executors or administrators, shall be entitled to sign judgment of *non pros.* Errors in law are either *common*, as that the declaration is insufficient in law to maintain the action,

and that the judgment was given for the plaintiff instead of the defendant, or *vice versa*; or *special*, as any matter appearing on the face of the record, which shews the judgment to be erroneous. Special assignments require counsel's signature, but not common. By *H. T., 4 Wm. IV., r. 13*, no *scire facias ad audiendum errores* shall be necessary (unless in case of a change of parties), but a plaintiff in error may demand a joinder in error, or plea to the assignment of errors, and the defendant in error, his executors or administrators, shall be bound, within twenty days after such demand, to deliver a joinder or plea or to demur, otherwise the judgment shall be reversed. Provided also, that in all cases, such time may be extended by a Judge's order. The court in error, after errors are duly assigned, and issue in error joined, shall, at such time as the Judges shall appoint, either in term or vacation, review the proceedings, and give judgment as they shall be advised thereon. *11 Geo. IV. & 1 Wm. IV., c. 70, § 8.* When issue in law is joined, either party might set down the cause for argument, with one of the Masters, and forthwith give notice thereof in writing to the other party, and proceed to argument in like manner as on a demurrer, without any rule or motion for a concilium. There are two days in each term appointed by the Exchequer Chamber for the dispatch of business; one, usually the third or fourth day of the term, called the general affirmance day; the other, a day or two before the end of the term, called the adjournment day. Four clear days before the day appointed for argument, the plaintiff in error shall deliver copies of the judgment of the court below, and of the assignment of errors, and of the pleadings thereon, to the Judges of the Queen's Bench, on writs of error from the Common Pleas or Exchequer, and to the Judges of the Common Pleas on writs of error from the Queen's Bench, and the defendant in error shall deliver copies thereof to the other Judges of the Court of Exchequer Chamber before whom the case is to be heard; and in default by either party, the other party may deliver such books as ought to have been delivered by the party making default, and the party making default shall not be heard until he shall have paid for such copies, or deposited with one of the Masters a sufficient sum to pay for such copies. No entry on record of the proceedings in error shall be necessary before setting down the cause for argument; but after judgment shall have been given in the court of error in the Exchequer Chamber, either party shall be at liberty to enter the proceedings in error on the judgment roll remaining in the court below. *H. T., 4 Wm. IV., rr. 14, 15, 16.* Only one counsel is heard for each party; and if the court be equally divided, the judgment is affirmed. The common judgment for the defendant in error is that the judgment be affirmed, unless he has pleaded a release of errors, or

the Statute of Limitations, and it is found for him, then the judgment is, that the plaintiff be barred of his writ of error, and not *quod affirmetur*. As to the judgment for the plaintiff in error, where judgment is given in the court below against the defendant, and he brings a writ of error, the judgment in the writ of error, if given for him, shall be *quod judicium reverteretur*. But if the judgment in the court below were given against the plaintiff, and he bring a writ of error, and succeed, in such case, the judgment below shall not only be reversed, but the court of error shall also give judgment as the court below ought to have given. Four days exclusive after the affirmance, one of the Masters of the court in which the original judgment was given will sign judgment and tax costs. An entry of the affirmance, &c., must then be made on the judgment roll in the court below. By 3 & 4 Win. IV., c. 42, § 30, if any person shall sue out any writ of error upon any judgment whatsoever, given in any court in any action personal, and the court of error shall give judgment for the defendant thereon, then interest at 4 per cent. shall be allowed by the court of error for such time as execution has been delayed by such writ of error, for the delaying thereof. Where judgment is reversed for error in law, each party pays his own costs in error, but the prevailing party shall have his costs in the original action. The execution is sued out as in ordinary cases. If the judgment below be reversed, the plaintiff in error shall have a writ of restitution, in order that he may be restored to all he has lost by the judgment. If the money under the execution on the original judgment have not been paid over, a *scire facias quare restitutionem non*, suggesting the matter of fact, viz., the sum levied, &c., must previously issue. And a defendant might be obliged to enter into a rule not to commit waste pending the writ of error, if it be necessary.

2. Error to the House of Lords, after affirmance or reversal in the Exchequer Chamber.

The writ is addressed to the chief justice or chief baron of the court in which the original judgment was given, and where the record remains, and is made returnable immediately before the Queen in her present Parliament, if the Parliament be then sitting, or, after a prorogation, then before the Queen in her Parliament at the next session, or, after a dissolution, then before the Queen in her next Parliament, specifying the day on which it is to be holden. The allowance and supersedeas are the same as in the original error. Bail must again be put in, if necessary, precisely as on the former writ of error. When the transcript has been completed, examined, and annexed to the writ of error, the Chief Justice of the court goes in person, attended by one of the Masters, to the House of Lords with the record itself and the transcript. The latter, after being

examined with the record, is left there; but the record is immediately brought back to the court, in order that execution may be awarded there, if the judgment be affirmed in the court above. By an order of the House of Lords, 13th July, 1678, writs of error in Parliament shall be brought in (that is, the record shall be certified) within fourteen days from the first day of the session in which such writ shall be returnable; unless it be upon judgments given during the session, in which case the writ must be brought in within fourteen days after the judgment is given, otherwise such writ will not be received. The plaintiff must assign errors within eight days after the removal of the record; and if he do not do so, within such further time as the House shall give him, he will suffer a *non pros*. If he allege diminution, a *certiorari* must be issued to bring up the record, and returned within ten days next after his plea of diminution put in, or such further time as the House shall give him, otherwise the defendant may enter a *non misit breve*, plead in *nullo est erratum* and proceed to affirm the judgment, without noticing the diminution alleged. It is seldom necessary to move that the defendant appear and make defence, for he usually pleads or demurs to the assignment of errors voluntarily. A peer then moves that the cause be set down for hearing; 250 copies of the case are printed for the use of the House; two counsel for each party are allowed to speak, and the affirmance or reversal of the judgment is decided by the votes of peers present; no proxies can vote. The taxation of costs is regulated by 7 & 8 Geo. IV., c. 64. The other proceedings are similar to those above stated.

3. Error from inferior courts of record, where the proceedings are according to the course established by the common law, to the Court of Queen's Bench.

The writ and the allowance are the same as before mentioned. Bail must be given where the damages are under 20*l*. 7 & 8 Geo. IV., c. 71, § 6. It is usual for the inferior courts to send only the transcript of the record, and not the record itself. Plaintiff cannot allege diminution, except from the county palatine of Lancaster. The plaintiff has eight days after writ of error to assign errors, and defendant twenty days after demand, to deliver a joinder, plea, or demurrer. The proceedings are then entered of record, and argued as in the first case mentioned, but the execution issues out of the Queen's Bench, although the original record remains in the court below.

4. Error to the House of Lords after judgment of inferior court affirmed or reversed in Queen's Bench.

The proceedings are similar to those set forth under the 2d head.

5. Error *coram nobis* or *vobis*.

If there be any error in the process, or the error be in fact, and not in law, the writ of error lies to the same court to examine its

own record and rectify the error. It is *coram nobis* in the Queen's Bench, and *coram vobis* in the Common Pleas. This writ is a *superseas* of execution from the time of notice that it is sued out. There must be an affidavit of the error in fact, otherwise the writ will not be allowed. Where the errors are matter of law, the plaintiff has twenty days after allowance of writ to assign errors, and the defendant may be ruled to plead, if he do not plead voluntary. It is a four-day rule. The remainder of the proceedings are similar to those above mentioned. Where the errors are matter of fact, the plaintiff cannot assign more than one error, and he cannot assign error in law and error in fact together, for they are distinct things. Issue is joined as in ordinary cases, and the trial, &c., is the same in every respect as other trials at *Nisi Prius*.

6. Error in criminal cases.

After a judgment given against a prisoner, either at sessions or the assizes, if there be a substantial defect in the indictment, or error apparent on the record, such judgment may be reversed by the Queen's Bench. But it is necessary previously to obtain the Attorney-General's *fiat*: which, in misdemeanours, on sufficient cause shewn, is granted as a matter of course; but in felonies, it is granted only *ex merâ gratiâ*. *Chit. Arch. Prac.* 345.

Error fucatus nudâ veritate in multis est probabilior; et sæpenumero rationibus vincit veritatem error. 2 Co. 73.—(Painted error is in many things more probable than naked truth; and very frequently error conquers truth by reasoning.)

Error, qui non resistitur, approbatur. Doct. and Stud., c. 70.—(An error, which is not resisted, is approved.)

Errores ad sua principia referre, est refellere. 3 Inst. 15.—(To refer errors to their principles, is to refute them.)

Errores scribentis nocere non debet. Jenk. Cent. 324.—(The mistakes of one writing ought not to harm.)

ERTHMOTUM, a meeting of the neighbourhood to compromise differences among themselves; a court held on the boundary of two lands. *Leg. Hen. I., c. 57.*

Erubescit lex filios castigare parentes. 8 Co. 116.—(The law blushes when children correct their parents.)

ESBRANCATURA, cutting off branches or boughs in forests, &c. *Hov.* 784.

ESCALDARE, to scald. It is said that to *scald hogs* was one of our ancient tenures in serjeanty. *Lib. Rub. Scaccar' MS.* 137.

ESCAMBIO [*cambier*, Span., to change], a license granted to make over bills of exchange to another beyond the sea. Abolished 59 Geo. III., c. 49, § 11.

ESCAPE [*échaper*, Fr., to fly from], a violent or private evasion out of some lawful restraint; as where a man is arrested or imprisoned, and gets away before he is delivered by due course of law. Escapes are either in civil or criminal cases.

1st, *Civil*. They are either *voluntary*,

by the express consent of the keeper, after which he never can take his prisoner again (though the plaintiff may retake him at any time), but the sheriff must answer for the debt, and he has no remedy over against the person escaping; or, *negligent*, where a prisoner escapes without his keeper's knowledge or consent, and then upon fresh pursuit the defendant may be retaken, even on a Sunday, and the sheriff shall be excused, if he have him again, before any action brought against himself for the escape. If the sheriff carry a defendant in his custody out of the county, except in conveying him by the most convenient route to the county gaol, he will be guilty of suffering an escape, and might even be liable to an action by the defendant for a false imprisonment. 3 Bl. Com. 415; *Chit. Arch. Prac.* 452.

2d, *Criminal*. An escape of a person lawfully arrested for felony or misdemeanour, is an offence against public justice, and punishable by fine or imprisonment. Officers and others negligently permitting a felon to escape are punishable by fine, but voluntarily permitting an escape amounts to the same kind of offence, and is punishable in the same degree as the offence of which the prisoner is guilty, and for which he is in custody, whether treason, felony, or trespass; although, before the conviction of the principal party, the officer thus neglecting his duty may be fined and imprisoned for a misdemeanour. 4 Step. Com. 254.

ESCAPE-WARRANT, a process addressed to all sheriffs, &c., throughout England, to retake an escaped prisoner, even on a Sunday, and commit him to proper custody. 1 Ann., c. 6.

ESCAPIO QUIETUS, delivered from that punishment which, by the laws of the forest, lies upon those whose beasts are found within the land where forbidden.

ESCAPIUM, that which comes by chance or accident. *Cowell.*

ESCEPPA, a measure of corn.

ESCHEAT [*eschet*, or *échet*, formed from the word *eschoir*, or *échoir*, Fr., to happen], where a tenant of lands in fee dies without having aliened them in his lifetime, or disposed of them by his last will and testament and leaves no heir behind him to take them by descent, so that they result back, by a kind of reversion, to the original grantor, or lord of the fee, according to feudal principles. The title must be completed by entering on the lands and tenements so escheated.

Escheats are frequently divided into:—(1) those *propter defectum sanguinis*, i. e., if the tenant die without heirs, which occurs in the following cases:—

(a) When the tenant dies without any relations on the part of any of his ancestors.

(β) When he dies without any relation on the part of those ancestors from whom his estate descended.

(7) A monster not having the shape of mankind, for such cannot be heir to any land.

(8) Bastards, for they are the sons of nobody (*nullius filii*).

(9) Aliens, for they are incapable of taking by descent or inheritance.

An exception, however, has been made from the general law, in the case where the land was held by the party deceased, under a trust or mortgage, it being provided, for the protection of the party beneficially interested, that where a trustee or mortgagee dies without an heir, or his heir is not known, the Court of Chancery shall have power to direct a proper conveyance to be made, which shall be as effectual as if executed by his heir. 1 Wm. IV., c. 60; 4 & 5 Wm. IV., c. 23; 1 & 2 Vict., c. 69.

2. Those *propter delictum tenentis*, where, by attainder, the blood of the person attainted is so corrupted as to be rendered no longer inheritable. But, independently of any escheat, all lands and tenements to which the offender had an existing title were, by force of the attainder, immediately forfeited to the Crown, in the case of treason for ever, in other felonies for a year and a day. Escheat, therefore, operated in subordination to forfeiture, which latter incident intervened in the case of treason, to intercept the escheat altogether, and in the case of other felony, to intercept it for the limited period of a year and a day, after which, the land escheated to the lord of the fee.

By 54 Geo. III., c. 145, no attainder for felony, except for treason or murder, shall extend to the disinheriting of any person, nor to the prejudice of the right or title of any person or persons, other than the right or title of the offender during his natural life only, and that it shall be lawful for every person to whom the right or interest of any lands, tenements, or hereditaments, after the death of such offender, should or might have appertained, if no such attainder had been, to enter into the same.

By 3 & 4 Wm. IV., c. 106, when the person from whom the descent of any land is to be traced, shall have had any relation, who, having been attainted, shall have died before such descent shall have taken place, then such attainder shall not prevent any person from inheriting such land, who would have been capable of inheriting the same, by tracing his descent through such relation, if he had not been attainted, unless such land shall have escheated in consequence of such attainder before 1st January, 1834.

By 4 & 5 Wm. IV., c. 23, no land, chattels, or stock, vested in any person upon any trust, or by way of mortgage, or any profits thereof, shall escheat or be forfeited by reason of the attainder or conviction for any offence of such trustee or mortgagee, but shall remain in such trustee or mortgagee, or survive to his co-trustee, or descend or vest in his representatives, as if no

such attainder or conviction had taken place. 2 Bl. Com. 244.

Eschaeta derivatur à verbo Gallico eschier, quod est accidere, quia accidit domino ea eventu et ex insperato. Co. Lit. 93.—(Escheat is derived from the French word *eschier*, which signifies to fall, because it falls to the lord from an event and from an unforeseen circumstance.)

Eschaetae vulgò dicuntur quæ decidentibus iis quæ de rege tenent, cum non existit ratione sanguinis hæres, ad fiscum relabuntur. Co. Lit. 13.—(Those things are commonly called escheats which come into the Exchequer from the falling away of those who hold of the king, when a heir, by reason of want of blood, does not exist.)

ESCHEATOR [*escaetor*, Lat.], an officer anciently appointed by the lord treasurer, &c., in every county, to make inquests of titles by escheat, which inquests were to be taken by good and lawful men of the county, impanelled by the sheriff. 4 Inst. 225.

ESCHECCUM, a jury or inquisition.

ESCHIPARE, to build or equip.

ESCOT [Fr.], a tax formerly paid in boroughs and corporations towards the support of the community, which is called *scot* and *lot*.

ESCROW, a writing delivered to a third person, to become the deed of a party making it upon a future condition, when a certain thing is performed, and then it is to be delivered to the party to whom made. It is indeed a scrawl or writing, which is not to take effect as a deed till a condition be performed. Co. Lit. 36.

ESCUAGE [*escu*, Fr., a shield], a pecuniary instead of a military service. This kind of feudal tenure was called *scutagium* in Latin, or *servitium scuti* (the service of the shield), *scutum* being then a well-known denomination for money. Co. Lit. 68 b.

ESCURARE, to scour or cleanse.

ESGLISE, a church.

ESKETORES, robbers or destroyers of other men's lands and fortunes.

ESKIPPAMENTUM, skippage; tackle or ship furniture.

ESKIPPER, to ship.

ESKIPPESON, shipping or passage by sea.

ESLISORS. See ELISORS.

ESNE, a hireling of servile condition.

ESNECY, [*œnesia*], a private prerogative allowed to the eldest coparcener, where an estate is descended to daughters for want of an heir male, to choose after the inheritance is divided. *Fleta*, l. 5, c. 10.

ESPLEES [*expletia*], the products which ground or land yield; as the hay of meadows, herbage of pasture, corn of arable, rents, services, &c.; also, the lands, &c.; themselves. *Terms de Ley*.

ESPOUSALS [*sponsalia*, Lat., *espouse*, Fr.], the act of contracting or affiancing a man and woman to each other; the ceremony of betrothing.

ESQUIRE [*escu*, Fr., *scutum*, Lat., *σκῦτος*, Gk., an hide of which shields were made and afterwards covered], he who attended

a knight in the time of war, and carried his shield; whence he was called *escurer* in French, and *scutifer* or *armiger*, i. e., armour-bearer, in Latin. No estate, however large, confers this rank upon its owner.

Camden reckons four sorts of esquires:—1st, the eldest sons of knights, and their eldest sons, in perpetual succession; 2d, the eldest sons of younger sons of peers, and their eldest sons in like perpetual succession; 3d, esquires created by the sovereign's letters patent, or other investiture, and their eldest sons; 4th, esquires by virtue of their offices, as justices of the peace, and others who bear any office of trust under the Crown, and are so named in their commission or appointment. To these are added barristers-at-law, and the esquires of Knights of the Bath, each of whom constitutes three at his installation; and all foreign peers; for not only these, but the eldest sons of peers of Great Britain, though frequently titular lords, are only esquires in the law, and must be so named in all legal proceedings. 3 *Step. Com.* 15.

ESSARTUM, woodlands turned into tillage by uprooting the trees and removing the underwood. *Old Records*.

ESSENDI QUIETUM DE TOLONIO, a writ to be quit of toll; it lies for citizens and burgesses of any city or town, who, by charter or prescription, ought to be exempted from toll, where the same is exacted of them. *Reg. Orig.* 258.

ESSOIN, or **ASSOIGN** [*essonium*, Lat., *essoine*, Fr.], an excuse for him who is summoned to appear and answer to an action, or to perform suit to a court baron, &c., by reason of sickness or infirmity, or other just cause of absence.

Formerly the first general return day of the term was called the essoign day, because the court sat to receive essoigns; but when essoigns were no longer allowed to be cast in personal actions, the court discontinued such sittings. Still it was considered the essoign day for many purposes, until the 11 Geo. IV., and 1 Wm. IV., c. 70, § 6, did away with the essoign day for all purposes, as part of the term. *Chit. Arch. Prac.* 91.

Est aliquid quod non oportet etiam si licet; quicquid verò non licet certè non oportet. Hob. 159.—(There is that which is not proper, even though permitted: but whatever is not permitted, is certainly not proper.)

Est boni judicis ampliare jurisdictionem. Gilb. 14.—(It is the duty of a good Judge to amplify jurisdiction.)

Est ipsorum legislatorum tanquam viva vox; rebus et non verbis legem imponimus. 10 Co. 101.—(It is the characteristic of legislators themselves, as though they were a living voice; we impress law by actions, not by words.)

Est quiddam perfectius in rebus licitis. Hob. 159.—(There is something more perfect in things allowed.)

ESTACHE [*estacher*, Fr., to fasten], a bridge or stank of stone or timber. *Cowell*.

ESTANDARD, or **STANDARD**, an ensign for horsemen in war.

ESTANQUES, wears or kiddles in rivers.

ESTATE [*status*, Lat., *estat*, Fr.], the condition and circumstance in which an owner stands with regard to his property. It is either legal, customary, or equitable.

Blackstone considers legal estates in a threefold view, thus:—

(1) The quantity of interest or duration, divided into

(A) freeholds of inheritance, which are subdivided into:—

(a) Absolute, or fee-simple.

(b) Limited fees; which are (a) qualified or base fees, and (b) fees conditional at the common law, afterwards called fees-tail in consequence of the Statute *de Donis*, which may be (i) general or special, (ii) male or female, (iii) given in frank-marriage.

(B) Freeholds not of inheritance, subdivided into:—

(a) Conventional, or created by the act of the parties: they are (a) estates for one's own life, (b) estates *pur autre vie*, (c) general grant, without expressing any term at all.

(b) Legal, or created by operation of law: they are (a) tenancy in tail after possibility of issue extinct, (b) tenancy by the courtesy of England, (c) tenancy in dower.

(C) Estates less than freehold, subdivided into:—

(a) Estates for years.

(b) Estates at will.

(c) Estates at sufferance.

(D) Estates upon condition, subdivided into:—

(a) Estates upon condition implied.

(b) Estates upon condition expressed, and these are either precedent or subsequent: (a) precedent, which must be performed before an estate can vest or be enlarged; (b) subsequent, which by the failure or non-performance of which defeats an estate already vested; such are (i) estates held in *vadium*, gage, or pledge, which are of two kinds, *vivum vadium*, or living pledge, and *mortuum vadium*, dead pledge or mortgage; (ii) estates by statute merchant or statute staple; (iii) estates by *elegit*.

(2) The time of enjoyment, either

(A) in possession, or

(B) in expectancy, subdivided into:—

(a) Remainders created by convention of parties, and are (a) vested, (b) contingent or executory, (c) cross.

(b) Reversions arising by operation of law.

(3) The number and connection of the tenants: either

(A) severalty,

(B) joint-tenancy,

(C) coparcenary,

(D) common.

2 *Bl. Com.* c. vii—xii.

ESTOPPEL [*estoupir*, Fr., i. e., *oppilare*, *obstipare*], an impediment or bar to a right of action arising from a man's own act, or where he is forbidden by law to speak against his own deed. There are three kinds of estoppel: by matter of record, by matter in writing, by matter in *pais*. *Co. Lit.* 352.

Estoveria sunt ardendi, arandi, construendi, et claudendi. 13 Co. 68.—(Estovers are of firebote, housebote, ploughbote, and hedgebote.)

ESTOVERS, any kind of sustenance; also a wife's alimony. See **COMMON**.

ESTOVERIIS HABENDIS, a writ for a wife divorced *à mens et thoro*, to recover her alimony or estovers.

ESTRAYS, such valuable animals as are found wandering in any manor or lordship, and the owner is not known; in which case the law gives them to the sovereign, and they now most commonly belong to the lord of the manor by special grant from the Crown. But they must be proclaimed in the church, and two market towns next adjoining to the place where they are found; and then, if no person claim them, after proclamation and a year and a day passed, they belong to the sovereign or his substitute, without redemption, even though the owner were a minor, or under any other legal incapacity. The doctrine of estrays is only applicable to animals *domitæ naturæ*. 2 *Step. Com.* 362.

ESTREAT, the true extract, copy, or note of some original writing or record, and especially of recognizances, fines, amercements, &c., entered on the rolls of a court to be levied by the bailiff or other officer. *F.N.B.* 57; 3 & 4 Wm. IV., c. 99.

ESTRECIATUS, streightened, applied to roads.

ESTREPE, to make spoils in lands to the damage of another.

ESTREPEMENT [*estropier*, Fr., to lame, *extirpare*, Lat.], any spoil or waste made by tenant for life, upon any lands or woods, to the prejudice of him in reversion; also making land barren by continual ploughing. The writ of estrepement was abolished by 3 & 4 Wm. IV., c. 27.

ETHANIM, the seventh month of the Jewish sacred year, and the first of their civil; it answered partly to September and partly to October. After the captivity it was called *Tisri*. *Brown's Dict. of Bible*.

ETHELLING, or **ÆTHELING**. See **ADGLING**.

ET NON, a phrase that may be used in pleading, instead of *absque hoc*, in the negative part of a special traverse.

EVASION, a subtle endeavouring to set aside truth, or to escape the punishment of the law, which will not be endured. No one can plead ignorance of the law to evade it.

Eventus est qui ex causâ sequitur; et dicitur eventus quia ex causis evenit. 9 Co. 81.—(An event is that which follows from the cause; and is called an event because it arises from causes.)

Eventus varios res nova semper habet. *Co. Lit.*

379.—(A new matter always produces various events.)

EVES-DROPPERS. See **EAVES-DROPPERS**.

EVICITION [*evinco*, to overcome], a recovery of land, &c., by form of law.

EVIDENCE, proof, either written or unwritten, of facts in issue between parties.

The leading rules of evidence are the following:—

1. The sole object and end of evidence is, to ascertain the truth of the several disputed facts or points in issue on the one side or on the other; and no evidence ought to be admitted to any other point.

2. The point in issue is to be proved by the party who asserts the affirmative; according to the maxim *affirmanti non neganti incumbit probatio*. But where one person charges another with a culpable omission or breach of duty, this rule will not apply, for the person who makes the charge is bound to prove it, though it may involve a negative, since it is one of the first principles of justice, not to presume that a person has acted illegally, till the contrary is proved.

3. It will be sufficient to prove the substance of the issue.

4. The best evidence must be given of which the nature of the thing is capable. The exceptions to this rule are, (a) where it is necessary to prove an entry in a public book, the original needs not be shewn; but, from a principle of general convenience, an examined copy will be admitted; (b) in the case of all peace-officers, justices of the peace, constables, &c., it is sufficient to prove that they acted in these characters, without producing their appointments; (c) an admission of a fact by a party to a suit has, in many cases, been considered sufficient to dispense with strict and regular proof, which would otherwise have been necessary.

5. Hearsay evidence of a fact is not admissible. The following cases are clearly distinguishable from hearsay evidence:—the testimony of a deceased witness, who has been examined upon oath, on the trial of a former action between the same parties, and where the point at issue is the same as in the second action, is admissible on the trial of the second action, and may be proved by one who heard him give evidence; for such evidence on the former trial was not given in an extrajudicial manner, but upon oath: the parties to the action were the same, the point in issue was the same, and an opportunity was given for cross-examination. Hearsay is often admitted in evidence as part of the transaction which becomes the subject of enquiry; the meaning of which seems to be, that where it is necessary in the course of a cause to enquire into the nature of a particular act, or the intention of the person who did the act, proof of what the person said at the time of doing it is admissible in evidence, for the purpose of showing its true character. The exceptions to the admission of hearsay evidence are the following:—death-bed declarations (which see);

questions of pedigree, public right, custom, boundaries, &c.; also, old leases, rent-rolls, surveys, &c., have been received in favor of persons claiming under the lessors; declarations against interest; rectors' and vicars' books as to the receipt of ecclesiastical dues in favour of their successors; also, entries in the books of a tradesman by his deceased shopman, who therein supplies proof of a charge against himself, have been admitted as proof of the delivery of goods, or of other matter there stated within his own knowledge. But the 7 Jac. I., c. 12, enacts, that the shopbook of a tradesman shall not be evidence, in any action for wares delivered, or work done, above one year before the bringing of the action, except the tradesman or his executor shall have obtained a bill of debt or obligation of the debtor for the said debt, or shall have brought against him some action within a year next after the delivery of the wares, or the work done. See PAROL EVIDENCE; and SECONDARY EVIDENCE. *Phil. Evid.*, c. 7, § iii—vii.; 3 & 4 Wm. IV., c. 42, §§ 26, 27; 6 & 7 Vict., c. 85.

The rules of evidence are the same in civil and in criminal courts, for a fact must be established by the same evidence, whether it be followed by a civil or a criminal consequence. *Lord Melville's Case*, 29 How. St. Tr. 76, B.

EUNOMY [*eun*, Gk., good, and *nomos*, law], a constitution of good laws.

EUNDO, MORANDO, ET REDEUNDO (in going, delaying, and returning).

EWAGE [*eau*, Fr., water], toll paid for water-passage. See AQUAGE.

EWBRICE [*ew*, Sax., marriage, and *bryce*, breaking], adultery.

EWE [*euwa*], law.

EWRY, an office in the royal household where the table linen, &c., is taken care of.

EX ABUNDANTI CAUTELA (from unnecessary care).

Ex antecedentibus et consequentibus fit optima interpretatio. 2 Inst. 317.—(The best interpretation is made from antecedents and consequents.)

EXACTION, a wrong done by an officer, or one in pretended authority, by taking a reward or fee for that which the law allows not, whereas *extortion* is where an officer takes more than is due, when something is due to him. The punishment is fine and imprisonment. *Co. Lit.* 368.

EXACTOR REGIS, the king's collector of taxes; also a sheriff.

EXAMINATION, the act of enquiring by questions as to a person's knowledge of facts or science; also a searching by, or cognizance of, a magistrate.

EXAMINERS IN CHANCERY. There are two appointed to interrogate and cross-interrogate witnesses in town in causes depending in the court. Their fees for office copies are reduced to 4d. per folio. *Orders*, 13 Nov., 1844, 2.

EXANNUAL ROLL, the old way of exhibit-

ing sheriffs' accounts, the illeivable fines and desperate debts were transcribed into this roll, which was yearly read, to see what might be recovered.

EXCAMBIATOR, a broker, one employed to exchange lands.

EXCAMBIUM, an exchange; a place where merchants meet to transact their business.

EXCEPTIO, the Roman designation for the defendant's plea.

Exceptio ejus rei cujus petitur dissolutio nulla est. Jenk. Cent. 37.—(There is no exception of that thing of which the dissolution is sought.)

Exceptio falsi omnium ultima.—(A plea of falsity is the basest of all things).

Exceptio nulla est versus actionem quæ exceptionem perimit. Jenk. Cent. 106.—(There is no exception against an action which entirely destroys an exception.)

Exceptio probat regulam de rebus non exceptis. 11 Co. 41.—(An exception proves the rule concerning things not excepted.)

Exceptio quæ firmat legem, exponit legem. 2 Buls. 189.—(An exception which confirms the law, expounds the law.)

EXCEPTIO REI JUDICATÆ, a defence in the Scotch law that the matter has been adjudged in another court or country, and the judgment carried into effect.

Exceptio semper ultima ponenda est. 9 Co. 53.—(An exception is always to be put last.)

EXCEPTION, exclusion of any thing or person; a stop or stay to an action; also the particular point of law stated in the margin of every demurrer. In Chancery, exceptions may be taken to pleadings if scandalous or impertinent, and if a defendant's answer be insufficient, the plaintiff may file exceptions to it; and a Master's report may also be excepted to.

In the Scotch law *exception* is synonymous to *defence*.

EXCEPTIONS TO EVIDENCE. See BILL OF EXCEPTIONS.

Excessum in jure reprobatur. Excessus in re qualibet jure reprobatur communi. Co. 44.—(Excess in law is reprehended. Excess in any thing is reprehended at common law.)

EXCHANGE [*cambium, permutatio*], often contracted into *change*, a building or other place in considerable trading cities, where the merchants, agents, bankers, brokers, and other persons concerned in commerce, meet at certain times to confer and treat together of matters relating to exchanges, remittances, payments, adventures, assurances, freights, and other mercantile negotiations, both by sea and land.

Also used to designate that species of mercantile transactions, by which the debts of individuals residing at a distance from their creditors are cancelled without the transmission of money.

Par of exchange. The *par* of the currency of any two countries means, among merchants, the equivalency of a certain amount of the currency of the one in the currency of the other, supposing the currencies of

both to be of the precise weight and purity fixed by their respective mints. Thus, according to the mint regulations of Great Britain and France, 1*l.* sterling is equal to 25 fr. 20 cent., which is said to be the par between London and Paris. And the exchange between the two countries is said to be at par when bills are negotiated on this footing; that is, for example, when a bill for 100*l.* drawn in London is worth 2,520 fr. in Paris, and conversely. When 1*l.* in London buys a bill on Paris for more than 25 fr. 20 cent., the exchange is said to be in favour of London, and against Paris; and when, on the other hand, 1*l.* in London will not buy a bill on Paris for 25 fr. 20 cent., the exchange is against London, and in favour of Paris.

Circumstances which determine the course of exchange. The exchange is affected, or made to diverge from par, by two classes of circumstances:—*first*, by any discrepancy between the actual weight and fineness of the coins, or of the bullion for which the substitutes used in their place will exchange, and their weight or fineness as fixed by the mint regulations; and, *secondly*, by any sudden increase or diminution of the bills drawn in one country upon another. *McCulloch's Comm. Dict.*

EXCHANGE, *bill of*. See BILL OF EXCHANGE.

EXCHANGE, *deed of*, an original common law conveyance, being a mutual grant of equal interests, the one in consideration of the other, no delivery being necessary, but an actual entry by each party is positively requisite to perfect it. If either party die before entry, the exchange will be void. It is, therefore, the preferable practice that the parties (except corporate bodies and others, who cannot stand seised to a use) execute reciprocal conveyances, the one in consideration of the other, founded on the Statute of Uses, as lease and release; which will obviate the necessity of entry. An exchange can only be between two parties, though the number of persons is immaterial, i. e., several persons may compose each part of the deed. The word "exchange" is the only operative word, which, by 8 & 9 Vict., c. 106, § 4, does not now imply any condition in law.

Exchanges under inclosure acts are generally considered as not bound by these rules. Thus, lands of freehold tenure may be exchanged for lands of copyhold tenure within the same parish or manor; a tenant for life may exchange with a tenant in fee, provided the remainder man be not thereby injured; an equitable tenant with a tenant of the legal estate, and a copyhold tenant with his own lord. 41 Geo. III., c. 109, § 15. Exchanges made under this act effect a permanent substitution of land for land, but leave the title on either side untouched; the consequence of which is that each party receives his new land disengaged from all defects in the other's title, but subjected to those which

previously existed in his own. By 4 & 5 Wm. IV., c. 30, proprietors of lands lying in common fields are enabled, by the intervention of a Judge of assize, as the act provides, to exchange them for other lands in the same or in any adjoining parish, notwithstanding any legal disability of the parties. The 6 & 7 Wm. IV., c. 115, extended by 3 & 4 Vict., c. 31, authorises exchanges of lands lying in the open fields or adjoining thereto for other lands in the same or any adjoining parish, and communicates to the lands allotted and given in exchange, the title and tenure of the original lands (§§ 33, 35, 36).

But these allotments, &c., can hardly be called exchanges; they are mere substitutions of one piece of land for another, without effecting any change or alteration of the title or interest, the purpose being convenience of occupation and contiguity of possession. *Watk. Conv.* 314.

EXCHANGE OF LIVINGS, effected by resigning them into the bishop's hands, and each party being inducted into the other's benefice; if either die before the both are inducted, the exchange is void. 31 Eliz., c. 6, § 8.

EXCHEAT. See ESCHEAT.

EXCHEQUER BILLS, bill of credit issued by authority of Parliament. They are for various sums, and bear interest (generally from 1*½d.* to 2*½d.* per diem, per 100*l.*) according to the usual rate at the time. The advances of the Bank to Government are made upon Exchequer Bills; and the daily transactions between the Bank and Government are principally carried on through their intervention.

Notice of the time at which outstanding Exchequer Bills are to be paid off is given by public advertisement. Bankers prefer vesting in Exchequer Bills to any other species of stock, even though the interest be for the most part comparatively low; because the capital may be received at the Treasury at the rate originally paid for it, the holders being exempted from any risk of fluctuation, Exchequer Bills were first issued in 1696, and have been annually issued ever since. The amount outstanding and unprovided for on the 5th of January, 1843, was 18,187,800*l.* *McCulloch's Comm. Dict.*

EXCHEQUER [*eschequier*, Nor. Fr., *schaccarium*, low Lat., *schatz*, Germ., a treasure,] CHAMBER, *court of*, a tribunal of appeal to correct the errors of other jurisdictions.

First, it exists as a court of mere debate, such causes from the other courts being sometimes adjourned into it as the Judges, upon argument, find to be of great weight and difficulty, before any judgment is given upon them in the court below. It then consists of all the Judges of the three superior courts of common law, and now and then the Lord Chancellor also.

Second, it exists as a court of error, where the judgments of each of the superior courts of common law, in all actions whatever, are subject to revision by the Judges of

the other two sitting collectively. The composition of this court consequently admits of three different combinations, consisting of any two of the courts below, viz., those which were not parties to the judgment supposed to be erroneous. 11 Geo. IV. & 1 Wm. IV., c. 70, § 8.

The 40 Geo. III., c. 39, established a Court of Exchequer Chamber in Ireland.

EXCHEQUER, *court of*, consists of two divisions, a court of revenue and a court of common law. Its equity jurisdiction was transferred to the Court of Chancery by 5 Vict., c. 5. As a court of revenue, it ascertains and enforces, by proceedings appropriate to the case, the proprietary rights of the Crown against the subjects of the realm. To proceed against a person in this department of the court is called to *exchequer* him. As a court of common law, it administers redress between subject and subject in all actions whatever, except real actions. It is a court of record, and its Judges are five in number, consisting of one chief and four *puisné* barons. 3 *Step. Com.* 401.

The 6 Anne, c. 26, established a Court of Exchequer in Scotland.

EXCISE, the name given to the duties or taxes laid on certain articles produced and consumed at home; but, exclusive of these, the duties on licences, auctioneers, and post-horses, are also placed under the management of the excise, and are consequently included in the excise duties.

Excise duties were introduced into England by the Long Parliament in 1643, being then laid on the makers and venders of ale, beer, cider, and perry. The royalists soon after followed the example of the republicans, both sides declaring that the excise should be continued no longer than the termination of the war. But it was found too productive a source of revenue to be again relinquished; and when the nation had become accustomed to it for a few years, the Parliament declared, in 1649, that "the impost of excise was the most easy and indifferent levy that could be laid upon the people." It was placed on a new footing at the Restoration; and, notwithstanding, Mr. Justice Blackstone says, that "from its first original to the present time, its very name has been odious to the people of England," it has continued progressively to gain ground, and is at this moment imposed on various important articles, and furnishes a large share of the public revenue of the kingdom. The laws with respect to the general management of the excise were consolidated by the 7 & 8 Geo. IV., c. 5. *McCulloch's Comm. Dict.*

EXCLUSA, EXCLUSAGIUM, a sluice to carry off water; the payment to the lord for the benefit of such a sluice.

EXCOMMENCEMENT, excommunication. *Law French.*

EXCOMMUNICATION, an ecclesiastical interdict or censure, divided into the greater and the lesser; by the former a person was

excluded from the communion of the church, the company of the faithful, and incapacitation of any legal act; by the latter he is merely debarred from the service of the church.

Excommunication in all cases of contempt is discontinued, and in lieu thereof, where a lawful citation or sentence has not been obeyed, the Judge shall have power, after a certain period, to pronounce such person contumacious and in contempt, and to signify the same to the Court of Chancery: whereupon a writ *de contumace capiendo* shall issue from that court, which shall have the same force and effect as formerly belonged, in case of contempt, to a writ *de excommunicato capiendo*. 53 Geo. III., c. 127, § 2.

Excommunicatio minor est, per quam quis à sacramentorum participatione conscientia vel sententia arceatur; major est, quæ non solum à sacramentorum verum etiam fidelium communione excludit, et ab omni actu legitimo separat aut dividit. Co. Lit. 133.—(The lesser excommunication is that by which a man, either by conscience or sentence, is expelled from participation in the sacraments; the greater is where he is not only excluded from participation in the sacraments, but from all community with the faithful, and from every legitimate act.)

EXCOMMUNICATO CAPIENDO. See EXCOMMUNICATION.

EXCOMMUNICATO DELIBERANDO, a writ to the sheriff for delivery of an excommunicate person out of prison, upon certificate from the ordinary of his conformity to the ecclesiastical jurisdiction. F. N. B. 63.

Excommunicato interdicatur omnis actus legitimus, ita quod agere non potest, nec aliquem convenire, licet ipse ab aliis passit conveniri. Co. Lit. 133.—(Every legitimate act is forbidden an excommunicated person, so that he cannot act, nor sue any person; but he may be sued by others.)

EXCOMMUNICATO RECIPIENDO, or RECAPIENDO, a writ whereby persons excommunicated, being for their obstinacy committed to prison, and unlawfully delivered before they have given caution to obey the authority of the church, are commanded to be sought after, retaken, and imprisoned again. *Reg. Orig.* 67.

EX CONTRACTU (from a contract).

EXCULPATION, *letters of*, the warrant to an offender indicted for citing witnesses in his own defence: *Scotch Law.*

EXCUSABLE HOMICIDE is of two sorts, either *per infortunium*, by misadventure, or *se defendendo*, upon a sudden affray.

Homicide, *per infortunium*, is where a man, doing a lawful act, without any intention of hurt, unfortunately kills another; but, if death ensue from any unlawful act, the offence is manslaughter, and not misadventure.

Homicide, *se defendendo*, is where a man kills another upon a sudden rencontre, merely in his own defence, or in defence of

his wife, child, parent, or servant, and not from any vindictive feeling. 4 Bl. Com. 488.

Excusat aut extenuat delictum in capitalibus quod non operatur idem in civilibus. Bac. Max. r. 15.—(A wrong, in capital cases, is excused or palliated, which would not be treated the same in civil matters.)

Excusatur quis quod clameum non apposuerit, ut si toto tempore litigii fuit ultra mare quacunque occasione. Co. Lit. 260.—(He is excused who does not bring his claim, if, during the whole period in which it ought to have been brought, he was been beyond sea on any occasion.)

EXCUSE, to seize and detain by law.

EXCUSSION, seizure by law.

EX DELICTO (from a tort or offence).

Ex delicto non ex supplicio emergit infamia.—(Infamy arises from the crime, not from the punishment.)

Ex diuturnitate temporis omnia præsumuntur esse solemniter acta. Jenk. Cent. 185.—(From lapse of time, all things are presumed to have been done properly.)

Ex dolo malo non oritur actio. Cowp. 343.—(From a fraud an action does not arise.)

Ex donationibus autem feoda militaria vel magnam serjeantiam non continentibus oritur nobis quoddam nomen generale, quod est socagium. Co. Lit. 16.—(From grants not containing military fees or grand serjeanty, a kind of general name, is used by us, which is socage.)

EXEAT, a permission which a bishop grants to a priest to go out of his diocese; also, leave to go out generally.

EXECUTED CONSIDERATION, is where A. bails a man's servant, and the master afterwards promises to indemnify A.; but if a man promise to indemnify A. in the event of his bailing his servant, the consideration is then executory. With respect to an executed consideration, the rule is, that if it were not at the precedent request of the promiser, but a mere voluntary courtesy, it will not suffice to support a promise; therefore, in the first example, the promise would not be binding, unless the bailing were at the master's precedent request. 2 Step. Com. 113.

EXECUTED CONTRACT, is where nothing remains to be done by either party, and where the transaction is completed at the moment that the agreement is made, as where an article is sold and delivered, and payment therefor is made on the spot; but it is executory where some future act is to be done, as where an agreement is made to build a house in six months, or to do an act on or before some future day, or to lend money upon a certain interest, payable at a future time. Story on Contracts, 8.

EXECUTED ESTATES, estates in possession.

EXECUTED FINE, the fine *sur cognizance de droit, come ceo que il ad de son done*; or a fine upon acknowledgment of the right of the cognizee, as that which he has of the gift of the cognizor. Abolished by 3 & 4 Wm. IV., c. 74.

EXECUTED REMAINDER. See VESTED REMAINDER.

EXECUTED TRUST. When an estate is conveyed to the use of A. and his heirs, with a simple declaration of the trust for B. and his heirs, or the heirs of his body, the trust is perfect; and it is said to be executed, because no further act is necessary to be done by the trustee to raise and give effect to it; and, because there is no ground for the interference of a court of equity to affix a meaning to the words declaratory of the trust, which they do not legally import. 1 Sand. Uses and Trusts, 335.

As all trusts are executory in this sense, that the trustee is bound to dispose of the estate according to the tenor of his trust, whether active or passive, it would be more accurate and precise to substitute the terms *perfect* and *imperfect*, for *executed* and *executory* trust. Haye's Conv. 85.

EXECUTED USE, the first use in a conveyance upon which the Statute of Uses operates by bringing the possession to it, the combination of which, i. e., the use and the possession, formed the legal estate, and thus the statute is said to execute the use.

Executio est finis et fructus legis. Co. Lit. 289.—(Execution is the end and fruit of the law.)

Executio juris non habet injuriam. 2 Rol. Rep. 301.—(The execution of law does not any injury.)

Executio est executio juris secundum judicium. 3 Inst. 212.—(Execution is the execution of the law according to the judgment.)

EXECUTION, the last stage of a suit giving possession of anything recovered at law or in equity, and also the final sentence inflicted upon criminals. It is styled *final process*.

At common law, writs of execution are judicial processes, issuing out of the court where the record or other proceeding is, upon which they are grounded; and, therefore, when the record or transcript of the proceedings is removed into any of the courts at Westminster from a county palatine, or from an inferior court under 19 Geo. III., c. 70, § 4, or 33 Geo. III., c. 68, § 1, or from an inferior court under 1 & 2 Vict., c. 110, § 21, the execution is issued out of the superior court. 4 & 5 Wm. IV., c. 62, § 31; 6 & 7 Wm. IV., c. 106, § 11. A writ of execution may be sued out at any time within a year and a day after judgment actually signed by the master, in cases where a *scire facias* is not required, or where execution is not stayed by writ of error, injunction, agreement, or the like. In promises, covenant, case, trespass, and replevin, the writ of execution for the plaintiff is for damages and costs; in debt, for the debt, damages, and costs; in detinue for the goods or their value, with damages and costs. For the defendant in all cases, except replevin, the execution is for the costs only, but in replevin it is for a return of the goods also. The ordinary writs of execution are *capias ad satisfaciendum*; *fieri facias*; *clegit*; *levari*

facias; habere facias possessionem; de retorno habendo, and capias in withernam.

The writ of execution must strictly pursue the judgment in the amount, in the number and names of the parties, and in the subject-matter. It is tested on the day on which it is issued, and is made returnable immediately on the execution thereof. By 29 Car. II., c. 3, § 16, "no writ of *fiery facias*, or other writ of execution, shall bind the property of the goods of the party against whom such writ of execution is sued forth, but from the time that such writ shall be delivered to the sheriff, undersheriff, or coroners to be executed; and for the better manifestation of the said time, the sheriff, undersheriff, and coroners, their deputies and agents, shall, upon the receipt of any such writ (without fee for doing the same), endorse upon the back thereof the day of the month or year whereon he or they received the same." If two writs of execution against the same person are delivered to the sheriff, he must execute that first which was first delivered to him, even where both were delivered upon the same day; and he must set about executing the writ within a reasonable time after he receives it for execution; and if he omit doing so, and any damage arise to the party from his negligence, an action on the case may be supported against him. The sheriff cannot break open any outer door of the party's dwelling-house, in order to enforce a writ of execution; unless in the case of a writ of seisin, or *habere facias possessionem*. Writs of execution are seldom returned in practice, except the *elegit* and inquisition. Either party may, however, rule the sheriff to return the writ, even after he goes out of office, provided it be within six lunar months after the expiration of his term of office. If execution be sued out against two or more persons, and the whole amount be levied upon one, in actions *ex contractu* (unless upon a contract made with the defendants as partners in trade), the party upon whom the whole is levied may maintain an action against the others, and oblige them to contribute their respective shares; but in most cases in actions *ex delicto* he cannot thus compel a contribution, and he is, in general, altogether without remedy. An irregular execution will be set aside on motion, and usually with costs. *Chit. Arch. Prac.* 395. A variety of regulations are laid down by 7 & 8 Vict., c. 96, with regard to executions issued out of inferior courts (including the courts of requests) against the goods of the debtor, and for affording relief in cases of neglect, extortion, or other misconduct of their bailiffs and other officers. The 57 § abolishes arrests for debts under 20*l.*, consequently courts of requests have no longer the power of awarding execution against the person.

In Chancery, for the purpose of enforcing compliance with a decree or order, the court not only commits the parties neglecting to comply therewith, but also sequesters their

personal estate, and by a writ of assistance will order the delivery up of the estate itself, and may likewise compel a conveyance of lands; besides which, where money or costs are ordered to be paid, the party may now issue a *fiery facias* or an *elegit* for the purpose of enforcing payment. 13*th* Order, 26*th* August, 1841; 10*th* Order, 11*th* April, 1842; 1 & 2 Vict., c. 110, § 20; and the Orders, 10*th* May, 1839, in pursuance thereof.

The execution of a criminal is a species of justifiable homicide, provided it be in strict conformity with his sentence. It must be performed by the legal officer—the sheriff or his deputy. 4 *Bl. Com.* c. xxxii.

By 6 & 7 Wm. IV., c. 30, execution is not to be carried into effect until some days after conviction. See 7 Wm. IV. and 1 Vict., c. 77.

Among the Romans the execution of offenders was delayed, by decree of the senate, for ten days. *Potest enim pena dilata exigi, non potest exacta revocari*: Senec. *De vita et spiritu hominis laturum sententiam diu multumque cunctari oportere, nec precipiti studio, ubi irrevocabile sit factum, agitari*. Amm. Marcell. But this humane sentiment was anticipated by the Grecian legislator: νόμος ἄλλος περὶ θανάτου, μὴ μίαν μόνον ἡμέραν κρίνειν ἄλλα πολλάς. Plat. Ap. Socr.

EXECUTION OF DECREE. Sometimes, from the neglect of parties, or some other cause, it becomes impossible to carry a decree into execution without the further decree of the court upon a bill filed for that purpose. This happens generally in cases where parties having neglected to proceed upon the decree, their rights under it become so embarrassed by a variety of subsequent events, that it is necessary to have the decree of the court to settle and ascertain them. Such a bill may also be brought to carry into execution the judgment of an inferior court of equity, if the jurisdiction of that court is not equal to the purpose; as in the case of a decree in Wales, which the defendant has avoided by fleeing into England.

This species of bill is, generally, partly an original bill and partly a bill in the nature of an original bill, though not strictly original; and sometimes it is likewise a bill of revivor, or a supplemental bill, or both. *Story's Eq. Plead.* 342.

EXECUTION OF DEEDS, the signing, sealing and delivery of them by the parties, as their own acts and deeds, in the presence of witnesses. As to compulsory executions, the 1 Wm. IV., c. 36, § 15, rule 15, enacts, "that when any person shall have been directed by any decree or order in Chancery, to execute any deed or other instrument, or make a surrender or transfer, and shall have refused or neglected to execute, make, or transfer the same, and shall have been committed to prison under process for such contempt, or being confined in prison for any other cause, shall have been charged with or detained under process for such contempt,

and shall remain in such prison, the court may, upon motion or petition, and upon affidavit that such person has, after the expiration of two calendar months from the time of his being committed under, or charged with or detained under such process, again refused to execute such deed or instrument, or make such surrender or transfer, order or appoint one of the Masters in ordinary, or if the act is to be done out of London, then, if necessary, one of the Masters extraordinary to execute such deed or other instruments, or to make such surrender or transfer, for and in the name of such person, and the execution of the said deed or other instrument, and the surrender or transfer made by the said Master, shall, in all respects, have the same force and validity as if the same had been executed or made by the party himself; and within ten days after the execution or making of any such deed or other instrument, or surrender, or transfer, notice thereof shall be given by the adverse solicitor to the party in whose name the same is executed or made, and such party, as soon as the deed or other instrument, or surrender, or transfer, shall be executed or made, shall be considered as having cleared his contempt, except as far as regards the payment of the costs of the contempt, and shall be entitled to be discharged therefrom, under any of the provisions of this act applicable to his case; and the court shall make such order as shall be just, touching the payment of the costs of or attending any such deed, surrender, instrument, or transfer."

EXECUTION OF WILLS. By 1 Vict., c. 26, § 9, it is enacted, "that no will shall be valid unless it shall be in writing, and executed in manner hereinafter mentioned (that is to say): It shall be signed at the foot or end thereof by the testator, or by some other person in his presence, and by his direction, and such signature shall be made or acknowledged by the testator in the presence of two or more witnesses, present at the same time, and such witnesses shall attest and subscribe the will in the presence of the testator, but no form of attestation shall be necessary."

The 12th section enacts, "that this act shall not prejudice or affect any of the provisions contained in an act passed in the eleventh year of the reign of his Majesty King George IV., and the first year of the reign of his late Majesty King Wm. IV., intituled 'an Act to amend and consolidate the laws relating to the pay of the Royal Navy,' respecting the wills of petty officers and seamen in the Royal Navy, and non-commissioned officers of marines, and marines, so far as relates to their wages, pay, prize money, bounty money, and allowances, or other monies payable in respect of services in her Majesty's navy."

EXECUTION, writ of. This process, the service of which was a preliminary step to enforcing obedience to a decree or order in

Chancery, is abolished. 10th Ord., 26th August, 1841, amended by Orders, 11th April, 1842.

EXECUTIONE FACIENDA, a writ commanding execution of a judgment. *Obsolete.*

EXECUTIONE FACIENDA IN WITHER-NAMIUM, a writ that lay for taking cattle of one who has conveyed the cattle of another out of the county, so that the sheriff cannot replevy them. *Reg. Orig.* 82.

EXECUTIONE JUDICII, a writ directed to the Judge of an inferior court to do execution upon a judgment therein, or to return some reasonable cause wherefor he delays the execution. *F. N. B.* 20.

EXECUTIONER, he that inflicts capital punishment; he that puts to death according to the sentence of the law.

EXECUTIVE, that branch of the government which performs the functions of state. It differs from *legislative* and *judicial*, thus:—the body that deliberates and enacts laws is legislative: the body that judges and applies the laws in particular cases is judicial; and the body that carries the laws into effect, or superintends the enforcement of them, is executive, which power, in all monarchies, is vested in the Sovereign.

EXECUTOR [*exécuteur*, Fr.], a person appointed by a testator to carry out the directions and requests in his will, and to dispose of the property according to his testamentary provisions after his decease.

The leading duties and responsibilities of an executor may be thus classed:—

1. He would not be allowed, as against creditors, funeral expenses exceeding 20*l.*, if the testator died insolvent; and if he neglected to secure the property, and loss ensue, he will be personally liable for a devastavit.

2. Before probate of the will, an executor may effectually do most acts that he could enforce afterwards, because by the very appointment the testator has evinced personal confidence in his nominee, and, therefore, the interest of an executor arises not from the probate, but from the will; and for the same reason it has been held, that he may release a debt or assign a term for years before probate. Also, he may collect and secure assets, receive debts, and give effectual receipts, assent to a legacy, present bills or notes for payment, give notices of dishonour, or issue a fiat in bankruptcy; so he might issue a writ of summons at common law, though he cannot in strictness declare, because he is not in a position to truly make the necessary profert of the probate. He might also file a bill in equity, but he must obtain probate before the hearing, though, strictly, an executor should not file a bill until he has obtained probate. He may be sued before probate, if he have acted. It is said that an expected administrator, before obtaining letters of administration, can do no act whatever; but it has been considered that he might file a bill in Chancery,

although he may not be able to commence an action at law, and he may collect, secure, and ascertain the value of the property, so as to enable him to make affidavit that it does not exceed a certain value, as required by 55 Geo. III., c. 184, § 38.

3. Instead of an inventory and valuation of the testator's personal property on stamped paper, it is now usual, in order to be safe, to have an accurate inventory made by any competent person, distinguishing such debts due to the estate as are sperate or good from those which are doubtful or desperate, and then obtain the written consent of all persons interested in the assets, or at least of the legatees or residuary legatee, which saves the expences of a valuation. It is a usual and proper precaution, in cases of the least doubt, shortly after the funeral, to publish an advertisement in the principal newspapers for debtors to pay their debts, and for claimants to send in the particulars of their claims to a named person; and this is essential before the speedy payment of simple contract creditors, and still more before the payment of legacies; for if, without such advertisement, and without suit, an executor or administrator should hastily pay a simple contract creditor, and afterwards specialty debts should appear, he may be liable to the consequences of a misapplication of assets and devastavit.

4. Probate should be obtained within six calendar months after death of testator, and if delayed after that time, a penalty of 100*l.* and 10*l.* per cent. on the property would be incurred. If there be a suit or dispute relative to the will or administration, the probate or letters of administration should be obtained within two calendar months after it has been ended. 55 Geo. III., c. 184, § 37. The probate should be obtained to the extent of the sum really expected to be received. An administrator, after obtaining letters of administration, stands in most respects in the same situation as an executor, and the cases relating to one in general equally apply to the other.

5. It is the duty of the executor or administrator to collect and speedily reduce into money the personal assets, when not otherwise directed, especially if they be of a perishable nature. If executors be directed by the will to carry on the testator's business or trade, they should do so under the protection of the Court of Chancery. The 3 & 4 Wm. IV., c. 42, § 2, enables executors or administrators to recover for any injuries to the real or personal estate of the deceased, committed within six months before his death. And actions against executors or administrators may be supported for any wrong committed by the deceased to the real or personal property of another provided they be brought within six months after the death of the deceased. § 31 subjects executors or administrators personally to costs, when nonsuited or having a verdict against them, like other plaintiffs, unless the court or Judge other-

wise order. But he will be allowed such costs out of the assets, unless he has been guilty of misconduct or fraud. If an executor be hastily pressed by one or more creditors, in case of any reasonable doubt, he should either act with the concurrence of the legatees and next of kin, or file a bill, or get a friendly creditor to file a bill, compelling all the creditors to come in and receive payment under the decree of a court of equity. Submissions to arbitration should restrict the arbitrator from awarding against the executor personally, and should be made with the consent of creditors, legatees, and next of kin.

6. As an executor or administrator cannot sue himself, the law allows him, when he has been legally invested with his representative character, to retain out of any assets that may have come to his hands, to the extent of all funeral and testamentary expences and debts legally paid by him out of his own pocket, and also any debt due to himself, before he pays any other creditor, in equal degree, and he may retain his own debt, notwithstanding a decree has been made in a suit by other creditors for administration of assets equally, and notwithstanding assets, out of which he seeks to retain his debt, came to his hands after decree, and even if the debt be barred by the Statute of Limitations. Where there are joint executors or joint administrators, they must, *inter se*, retain their debts rateably, and in proportion to the assets. The following is the order in which debts and legacies should be paid, unless there be certainly more than sufficient to pay every description of debt:—1st, funeral charges; 2d, the expences of proving the will, or taking out letters of administration; 3d, debts to the Crown by record or specialty, &c., but other debts to the Crown, not of record or specialty, are to be postponed to debts of record due to a subject, although Magna Charta would import that all debts to the king should be first paid; 4th, debts secured by statute, as money due to a friendly society, &c.; 5th, debts of record; 6th, recognizances and statutes, merchant or staple; 7th, rent, and covenants, and contracts of tenants; 8th, debts or unliquidated demands secured by bonds or covenants under seal. If there be two specialties, one already payable, and the other not yet due, the former must be preferred; 9th, simple contract debts, and of these, such as are due to the Crown must be paid first, and then servants' and labourers' wages; 10th, voluntary bonds, which are preferred to legacies.

7. It has long been settled that, amongst creditors in equal degree, an executor may, even after action commenced by an adverse creditor, and at any time before judgment therein, confess a judgment, and give a preference to any other favoured creditor in the same or an higher degree, thereby postponing the party first suing; and unless assets should afterwards come to hand sufficient to pay both, the first suitor will be totally

deprived of the benefit of his prior action, and this, although it be done for the express purpose of depriving the plaintiff of the debt. But a court of equity will, to a certain extent, by a decree, but not before, controul and prevent the preference, upon bill filed by any creditor, on behalf of himself and all other creditors, against the executor or administrator, requiring him to account and distribute equally, upon which a proper division and distribution will be decreed, and this is considered in the nature of a judgment in favour of all the creditors.

8. In general, legacies ought not to be paid within a year after the death of the testator, and not even then without an indemnity, if there be the least reason to apprehend that there are debts or claims outstanding. This year is allowed for the payment of legacies in analogy to the Statute of Distributions, which enacts, "that no distribution of the goods of any person dying intestate be made till after one year after the intestate's death;" and in order that the executor may have full opportunity to obtain information of the state of the property, and within that period, an executor cannot be compelled to pay a legacy, even in a case where the testator directed it to be discharged within six months after his death. An executor cannot give himself or any other legatee (except in the case of specific legacies) any preference over other legatees, as he may in the case of debts, nor can he retain so as to pay himself; and in case of insufficiency of assets to pay the whole, all general legatees are to abate alike and in proportion to the amount of their respective legacies; and a legatee will be compelled to refund when the estate proves insufficient, whether security has been given by him for such purpose or not.

9. An executor is not entitled to any remuneration for his own personal trouble or loss of time, unless it be expressed in the will; on which account it was that the law formerly gave to the executor the whole undisposed of residue, unless, by some expression, to be collected from the will, as by a bequest to the executor for his trouble, a contrary intention was to be collected. But now the next of kin, and not the executor, is entitled to the unbequeathed residue. 11 Geo. IV., and 1 Wm. IV., c. 40, §§ 1 & 2.

10. All the executors should join in suing as well in equity as at law, otherwise the defendant may plead in abatement or defeat the proceeding, unless those who have not proved have formally renounced in the ecclesiastical court. Consult *Toller, Wentworth, or Williams on "Executors and Administrators."*

EXECUTOR DE SON TORT. If a stranger take upon himself to act as executor, without any just authority, as by intermeddling with the goods of the deceased, and many other transactions, he is called an executor *de son tort*, i. e., of his own wrong, and is liable to all the trouble of his usurped office, without

any of the profits or advantages; but merely doing acts of necessity or humanity, as locking up the goods, or burying the deceased, will not amount to such an intermeddling as will charge a person as executor of his own wrong. 2 *Step. Comm.* 244.

EXECUTOR OF AN EXECUTOR. The interest in a testator's estate and effects, vested in his executor, at the decease of the executor, devolves upon such executor's executor; but, in the case of the decease of an administrator, a fresh administration must be granted; for this reason, while an executor is appointed by the testator, an administrator merely derives his authority from the ordinary.

EXECUTORY, performing official duties; contingent; also personal estate of a deceased.

EXECUTORY CONSIDERATION. See **CONSIDERATION.**

EXECUTORY CONTRACT. See **CONTRACT.**

EXECUTORY DEVISE, a gift of a future interest by will. It differs from a contingent remainder:—1st, because an executory devise is admitted only in last wills and testaments, yet interests tantamount to it are allowed in deeds, under the denomination of conditional limitations and contingent, springing, or shifting uses; 2dly, because an executory devise respects personalty as well as realty; 3dly, because an executory devise requires no preceding estate to support it; 4thly, because when any estate precedes an executory devise, it is not necessary that the executory devise should vest when such preceding estate determines. And, 5thly, because an executory devise cannot be prevented or destroyed by any alteration whatever in the estate out of which or after which it is limited, unless it be an estate tail, when the executory devise may be barred by a deed in conformity with the 3 & 4 Wm. IV., c. 74.

By executory devise, a fee or less estate may be limited after a fee, either absolute or base, so it be to take effect in possession within a life or lives in being, or within twenty-one years afterwards. And a fee may be limited to commence in *futuro*; as, till such fee take effect, the inheritance shall descend to the right heirs of the testator. *Watk. Conv.* 192.

EXECUTORY ESTATES, interests which depend for their enjoyment upon some subsequent event or contingency.

EXECUTORY FINES, the fines *sur cognizance de droit tantum*; *sur concessit*; and *sur done, grant et render*. Abolished by 3 & 4 Wm. IV., c. 74.

EXECUTORY REMAINDER, a contingent remainder, because no present interest passes.

EXECUTORY TRUSTS. In the case of articles of agreement, made in contemplation of marriage, and which are consequently preparatory to a settlement; and in the case of those wills which are merely directory of a subsequent conveyance, the trusts declared

by them are said to be executory or imperfect, because they require an ulterior act to raise and perfect them. They are rather considered as instructions for settlements than as instruments in themselves complete; and the Court of Chancery, in order to promote the presumed views of the parties in the one case, and to support the manifest intention of the testator on the other, will attach to the words expressive of the trusts a more liberal and enlarged construction than they would admit, if applied either to the limitation of a legal estate or a trust executed. 1 *Sand. Uses and Trusts*, 237.

EXECUTORY USES, springing uses, which confer a legal title answering to an executory devise, as when a limitation to the use of A. in fee, is defeasible by a limitation to the use of B., to arise at a future period, or on a given event.

EXECUTRIX, a woman entrusted to perform a testator's will.

Exempla illustrant, non restringunt, legem. Co. Lit. 240.—(Examples illustrate, not restrain, the law.)

EXEMPLIFICATION, a copy; a transcript either under the Great Seal, or under the seal of a particular court. 1 *Stark. Evid.* 224.

EXEMPLIFICATIONE, a writ granted for the exemplification or transcript of an original record. *Reg. Orig.* 290.

EXEMPTION, immunity; freedom from imposts; a privilege to be free from service or appearance.

EXENNIUM, or **EXHENIUM**, a gift; a new year's gift.

EXEQUATUR, an official recognition of a person in the character of consul or commercial agent, authorizing him to exercise his power.

EXERCITUALE, a heriot, paid only in arms, horses, or military accoutrements.

Ex facto jus oritur. 2 Inst. 49.—(The law arises from the deed.)

EXFREDIARE, to break the peace; to commit open violence.

Ex frequenti delicto augetur poena. 2 Inst. 479.—(Punishment increases with increasing crime.)

EX GRAVI QUERELA, a writ that lay for him to whom any lands or tenements in fee are devised by will (within any city, town, or borough wherein lands are devisable by custom), and the heir of the devisor enters and detains them from him. *Reg. Orig.* 224. Abolished by 3 & 4 Wm. IV., c. 27, § 36.

EXHEREDATION, a father's excluding a child from inheriting any part of his estate. *Civil Law*.

EXHIBIT, any paper produced in a court of law or equity.

EXHIBITION, an allowance for meat and drink, such as was customary among the religious appropriators of churches, who usually made it to the depending vicar. Also, the benefaction settled for the maintaining of scholars in the universities not

depending on the foundation. *Paroch. Antiq.* 304.

In the Scotch law, it is applied to an action for compelling the production of writings.

EXIGENDARIES. See **EXIGENTER**.

EXIGENCE, or **EXIGENCY** [probably a corruption of *exigents*, vitiated by an unskilful pronunciation], demand; want; need.

EXIGENT, or **EXIGI FACIAS** (that you cause to be demanded), a judicial writ commanding the sheriff to demand the defendant from county court to county court, or, if in London, from husting to husting, until he be outlawed; or, if he appear, then to take and have him before the court on a day certain in term, to answer to the plaintiff in an action of, &c. It must be tested on the day of the return of the *distringas*, whether in term or vacation. It must be returnable in the same or following term, on a day certain, and must have fifteen days at least between the *teste* and return; and, if possible, the return day should be regulated so that five hustings in London or county courts elsewhere, may be held between the *teste* and return of the writ, in order to save the expence of an *allocatur exigent*; for the *exigent* shall have such a return as that five county courts may intervene between the *teste* and return. *Chit. Arch. Prac.* 928.

EXEENTER [*exigendarius*], an officer of the Court of Common Pleas, who makes all exigents, proclamations, &c.

EXILE [*exilium*, Lat.], banishment; the person banished.

EXILIUM, a spoiling. The author of *Fleta* distinguishes between *vastum*, *destructio*, and *exilium*; for he tells us that *vastum* and *destructio* are almost the same, and are properly applied to houses, gardens, or woods; but *exilium* is where servants are enfranchised, and afterwards unlawfully turned out of their tenements. *Fleta*, l. 1, c. 11.

Exilium est patrie privatio, natalis soli mutatio, legum nativarum amissio. 7 Co. 20.—(Exile is a privation of country, a change of natal soil, a loss of native laws.)

EXITUS, children; offspring; also, the rents, issues, and profits of lands and tenements.

Exitus acta probat; finis, non pugna coronat. —(The conclusion proves the fact; the termination, not the trial, crowns the victory.)

EXLEGALITUS, he who is prosecuted as an outlaw.

EX-LEX, an outlaw.

Ex maleficio non oritur contractus.—(From any misdeed action a contract does not arise.)

Ex malis moribus bonae leges natae sunt. 2 Inst. 161.—(Good laws arise from evil manners.)

EX MERO MOTU (out of mere will).

Ex multitudine signorum colligitur identitas vera. Bacon.—(True identity is collected from the number of signs.)

Ex nudo pacto non oritur actio. Pl. Com. 305.—(An action does not arise from a nude contract.)

EX NECESSITATE REI (from the urgency of the case).

EX OFFICIO (officially; by virtue of office).

EX OFFICIO INFORMATIONS, proceedings filed in the Queen's Bench by the Attorney-General, at the direct and proper instance of the Crown, in cases of such enormous misdemeanours as peculiarly tend to disturb or endanger the government, or to molest or affront the Sovereign in discharging the royal functions. The information is tried by a petit jury of the county where the offence arises, and for that purpose, unless the case be of such importance as to be tried at bar, it is sent down by writ of *Nisi Prius* into that county, and tried either by a common or special jury, like a civil action. 4 *Step. Com.* 379.

EXONERATIONE SECTÆ, a writ that lay for the Crown's ward, to be free from all suit to the county-court, hundred-court, leet, &c., during wardship. *F. N. B.* 158.

EXONERATIONE SECTÆ AD CURIAM BARON, a writ of the same nature, issued by the guardian of the Crown's ward, and addressed to the sheriffs or stewards of the court, that they do not distrain him, &c., for not doing suit of court, &c. *N. N. B.* 352.

EXONERETUR (that he be discharged), an entry made upon the bail-piece upon render of a defendant to prison in discharge of his bail. The entry of the *exoneretur* is still considered necessary in the Queen's Bench and Common Pleas, though it is expressly dispensed with in the Exchequer by the rule of *M. T.*, 1 *Wm. IV.*, r. 2, § 12.

EX PARTE (on behalf of), a proceeding by one party in the absence of the other.

EX PARTE TALIS, a writ that lay for a bailiff or receiver, who, having auditors appointed to take his accounts, cannot obtain of them reasonable allowance, but is cast into prison. *F. N. B.* 129.

EXPATRIATION, the forsaking one's own country, with a renunciation of allegiance, and with a view of becoming a permanent resident and citizen in another country.

Ex paucis dictis intendere plurima possis. *Lit.* § 384.—(You can lay open many things from few expressions.)

Ex paucis plurima concipit ingenium. *Lit.* § 550.—(From few things the mind conceives many.)

EXPECTANT, depending on hope.

EXPECTANT ESTATES, interests to come into possession and be enjoyed in futuro; they are of two sorts—reversions and remainders. 2 *Bl. Com.* 163.

EXPECTATION, in the doctrine of chances, is applied to any contingent event, upon the happening of which some benefit is expected. This is capable of being reduced to the rules of computation: for a sum of money in expectancy, when a particular event happens, has a determinate value before that event happens. Thus, if a person is to receive any sum, as 10*l.*, when an event takes place, which has an equal chance or probability of happening or failing, the value of the expectation is half that sum, or 5*l.*: but if

there are three chances for failing, and only one for its happening, or one chance only in its favour out of all the four chances, then the probability of its happening is only one out of four, or one-fourth, and the value of the expectation is but one-fourth of 10*l.*, which is only 2*l.* 10*s.*, or half the former sum. And in all cases the value of the expectation of any sum is found by multiplying that sum by the fraction expressing the probability of obtaining it. So the value of the expectation on 100*l.*, when there are three chances out of five for obtaining it, or when the probability of obtaining it is three-fifths, is three-fifths of 100*l.*, which is 60*l.* And if *s* be any sum expected on the happening of an event, *h*, the chances for that event happening, and *f*, the chances for its failing; then, there being *h* chances out of *f* + *h* for

its happening, the probability will be $\frac{h}{f + h}$

and the value of the expectation is $\frac{h}{f + h}$

× *s*.

Expectation of life, in the doctrine of life annuities, is the share or number of years of life, which a person of a given age may, upon an equality of chance, expect to enjoy. Consult *Inwood's Tables*.

EXPEDIMENT, the whole of a person's goods and chattels, bag and baggage.

EXPEDITATE, to cut out the ball of a dog's fore-feet, for the preservation of the royal game. *Manw. c.* 16.

EXPEDITATÆ ARBORES, trees rooted up or cut down to the roots. *Fleta*, l. 2, c. 41. *Expedit reipublicæ ut sit finis litium.* *Co. Lit.* 303.—(It is for the public good that there be an end of litigation.)

EXPENDITORS, persons appointed by commissioners of sewers to pay, disburse, or expend the money collected by the tax for the repairs of sewers, &c., when paid into their hands by the collectors, on the reparations, amendments, and reformations, ordered by the commissioners, for which they are to render accounts when thereunto required.

EXPENSÆ LITIS, costs of suit.

EXPENSIS MILITUM NON LEVANDIS, &c., an ancient writ to prohibit the sheriff from levying any allowance for knights of the shire, upon those who held lands in ancient demesne. *Reg. Orig.* 261.

Experientia per varios actus legem facit. Magistra rerum experientia. *Co. Lit.* 60.—(Experience by various acts, makes law. Experience is the mistress of things.)

EXPILATION, robbery; the act of committing waste upon land to the loss of the heir.

EXPLETA, **EXPLETIA**, or **EXPLECIA**, the rents and profits of an estate. *Old Records*.

EXPLORATOR, a scout, huntsman, chaser.

EXPORTATION, that part of foreign commerce which consists in sending out goods for sale, and which is therefore the active part of trade, as the importation or purchasing of goods is the passive.

EXPORTS, the goods or produce which are sent abroad.

Expositio, quæ ex visceribus causæ nascitur, est aptissima et fortissima in lege. 10 Co. 24.

—(That exposition, which springs from the bowels of a cause, is the fittest and most powerful in law.)

EX POST FACTO (from something after the fact).

EXPRESS CONDITION. See **CONDITION.**

EXPRESS CONTRACT. See **CONTRACT.**

Ex procedentibus et consequentibus optima fiet interpretatio. 1 Rol. Rep. 375.—(The best interpretation is made from what precedes and what follows.)

Expressa non prosunt quæ non expressa prode-runt. 4 Co. 73.—(Things expressed do no good, which, not expressed, do no hurt.)

Expressio eorum quæ tacitè insunt nihil opera-tur. Co. Lit. 210.—(The expressing of those things, which are tacitly implied, oper-ates nothing.)

Expressio unius personæ est exclusio alterius. Co. Lit. 210.—(The mention of one person is the exclusion of another.)

Expressum facit cessare tacitum. —(What is expressed makes what is silent to cease.)

Expressum servitium regat vel declaret tacitum. Bacon.—(Let service expressed rule or de-clare what is silent.)

EXPROMISSAR, a surety; bail. *Roman Law.*

EXPROPRIATION, the surrender of a claim to exclusive property.

EX PROVISIONE MARITI (from the pro- vision of the husband).

EXPURGATION, the act of purging or cleansing.

EXPURGATOR, one who corrects by ex- purging.

EXSCRIPT, a copy; a writing copied from another.

EXTEND, to value the lands, &c., of one bound by a statute, who has forfeited his bond, at such an indifferent rate, as by the yearly rent, the creditor may in time be paid his debt.

EXTENT, or **EXTENDI FACIAS** (that you cause to be extended), the peculiar remedy to recover debts of record due to the Crown; it differs from an ordinary writ of execution at the suit of a subject, because under it the body, lands, and goods of the debtor may be all taken at once, in order to compel the payment of the debt. It is not usual, how- ever, to seize the body.

There are two kinds, *in chief*, and *in aid*.

(1.) Extent in chief. It issues from the Court of Exchequer, and may bear *teste* and be made returnable on any day certain in term or vacation. 5 & 6 Vict., c. 86, § 8. It directs the sheriff to take an inquisition or inquest of office, on the oaths of lawful men, to ascertain the lands, &c., of the debtor, and seize the same into the Queen's hands. The writ should be preceded by a *scire facias* in order to bring the debtor into court, and afford him an opportunity to shew cause against it; but where the debt is in danger of being lost, the extent will be

issued without a *scire facias*, upon an affida- vit of circumstances; and after the sheriff's return, the debtor, if he dispute the debt, or a third person, if he claim the property set forth in the inquisition, may enter an appearance and plead to the extent; issue is then joined, and it is decided either on demurrer or by a trial before a jury. If judgment be given for the Crown, it is that the subject take nothing by his traverse or plea; if given for the defendant or claimant, it is an award of *amoveas manus*. Error will lie upon the judgment, provided the Attorney-General consent to the proceeding. It is enacted by 2 & 3 Vict., c. 11, that no debt due to the Crown on judgment, statute or recognizance, inquisition of debt, obligation or specialty, or acceptance of office, shall affect any lands, tenements, or hereditaments, as to pur- chasers or mortgagees, unless and until such memorandum or minute thereof, as in the act provided, shall be left with the senior Master of the Court of Common Pleas, who shall forthwith enter the particulars in a book to be intituled, "The Index to the Debtors and Accountants to the Crown;" and farther that, whenever a *quietus* shall be obtained by a debtor or accountant to the Crown, and an office copy thereof shall be left with such Master, together with a cer- tificate signed by the accountant-general, that the same may be registered, that the Master shall forthwith enter the same in the said book accordingly; and also that it shall be lawful for the Lords of the Treasury, or any three of them, by writing under their hands (upon payment of such sums as they shall think fit to require into the receipt of her Majesty's Exchequer, to be applied in the liquidation of the debt or liability of any debtor or accountant to the Crown, or upon such other terms as they may think proper), to certify, that any lands, tenements, or hereditaments, of any such Crown debtor, or accountant, shall be held by the purchaser or mortgagee thereof, wholly exonerated from all further claim of the Crown; or in cases of leases for fines, to certify that the lessee shall hold the premises exonerated in like manner, without prejudice to the right of the Crown to the reversion upon such lease, and the rents and covenants reserved by the same; and thereupon the same lands, tenements, and hereditaments shall respec- tively be held exonerated as aforesaid.

There is also an *extent in chief in the second degree*, which is a hostile proceeding by the Crown against the debtor of a Crown debtor, against whom also an extent in chief has issued.

2. Extent in aid. It issues, not at the suit of the Crown, like an extent in chief, but at the suit or instance of a Crown debtor against a person indebted to himself; and it is grounded on the Statute of Extent, 33 Hen. IV., c. 39, and on the principle that the Crown is entitled to the debts due to the debtor. The practice is governed by 57 Geo. III., c. 117.

There is a special writ of extent, which is issued on the event of the death of a Crown debtor, and is called a *diem clausit extremum*, because it recites the death of the party. The sheriff is commanded to enquire, by a jury, concerning the property of the deceased debtor, and seize them into the Crown's hands. 4 *Step. Com.* 42.

EXTINGUISHMENT, the annihilation of a collateral, or the supersedure of one interest by another, and greater interest, thing, or subject in that out of which it is derived. It is of various natures as applied to various rights.

1. Extinguishment of Common. If he who is entitled to common appurtenant, purchase any part of the land, which is subject to his right of common, that right is extinguished for the whole: and so, if he release his right over any part of the land. But it has been justly doubted whether in any case, (and especially if all persons who have common appurtenant in the same land concur in discharging some part of it,) this legal trap should be allowed to operate. *Burton's Comp.* 437. If one of the tenants of a manor purchase any part of the land over which he has a right of common appendant, his right over the rest will continue. So on the alienation of any part of land which enjoys the benefit of common appendant or appurtenant (though the latter is less favoured by the old law), the right of common is preserved and apportioned. 1 *Bac. Ab.* 628. All incorporated hereditaments of necessity, or arising by operation of law, and services, may be extinguished, excepting ways.

2. Extinguishment of copyhold. When a tenant conveys to his lord, or does an act denoting his intention of not holding of his lord any longer, his copyhold is extinguished; when the lord is the active party, an enfranchisement is effected. See **COPYHOLD**.

3. Extinguishment of debt. A creditor, by accepting a higher security than he had before, extinguishes his first debt. And when judgment is given for a debt, it supercedes or extinguishes the previous obligation. So, if *feme-sole* debtee marry her debtor, or an obligee marry one of two joint obligors in a bond, or a debtor make his debtee, or *vice versa* his executor, in these cases the debt is extinguished. *Plowd.* 184; 1 *Salk.* 304.

4. Extinguishment of estates. If a person have a yearly rent out of lands, and afterwards purchase those lands, so that he has as good an estate in the land as in the rent, the rent is extinguished; for no one can have a rent going out of his own land, though a person must have as high an estate in the land as in the rent, or the rent will not be extinct. *Co. Lit.* 147. It appears that an estate by statute, recognizance, or elegit, may be extinguished by any act (as a deed of defeasance or of release,) which extinguished the debt. *Burt. Comp.* 373.

5. Extinguishment of an *interesse termini*. A mere *interesse termini* can neither promote

nor hinder the merger of any estate, nor can itself, properly speaking, be surrendered; but it may be extinguished by surrender in law, or by assignment or release. *Ibid.* 364.

6. Release by way of extinguishment. If my tenant for life make a greater estate than he is warranted in granting, as a lease to A. for life, remainder to B. and his heirs, and I release to A.; this extinguishes my right to the reversion, and shall enure to the advantage of B.'s remainder as well as of A.'s particular estate. 2 *Bl. Com.* 325.

EXTIRPATIONE, a judicial writ, either before or after judgment, that lies against a person who, when a verdict is found against him for land, &c., maliciously overthrows any house, or extirpates any trees upon it. *Reg. Jud.*, 13, 56.

EXTOCARE, to grub up lands and reduce them to arable or meadow. *Mon. Angl.*, t. 2, p. 71.

Extortio est crimen quando quis colore officii extorquet quod non est debitum, vel supra debitum, vel ante tempus quod est debitum. 10 *Co.* 102.—(Extortion is a crime, when, by colour of office, any person extorts that which is not due, or above due, or before the time when it is due.)

EXTORTION [*extorqueo*, Lat., to wrest away], any oppression under colour of right. It differs from bribery, in that the latter consists in the offering a present, or receiving one if offered; the former in demanding a fee or present by colour of office. See **EXACTION**.

Ex totâ materia emergat resolutio. *Wing.* 238. —(Let the resolution arise from the whole case.)

EXTRA COSTS, those charges which do not appear upon the face of the proceedings, such as witnesses' expences, fees to counsel, attendances, court fees, &c., an affidavit of which must be made, to warrant the Master in allowing them upon taxation of costs.

EXTRACT, a draught or copy of a writing.

EXTRACTA CURIÆ, the issues or profits of holding a court, arising from the customary fees, &c. *Puroch. Antiq.* 572.

EXTRAJUDICIAL [*extra*, Lat., and *judicium*], out of the regular course of legal procedure.

Extra legem positus est civiliter mortuus. *Co. Lit.* 130.—(An outlaw is civilly dead.)

Extraneus est subditus qui extra terram, i. e., potestatem regis, natus est. 7 *Co.* 16.—(A foreigner is a subject who is born out of the territory, that is, government of the King.)

EXTRAPAROCHIAL [*extra*, Lat., and *parochia*], out of any parish.

Extra territorium jus dicenti non paretur impune. 10 *Co.* 77.—(The command of one speaking beyond his territory cannot be obeyed with impunity.)

EXTRAVAGANTES, those decretal epistles which were published after the Clementines. They were so called, because at first they were not digested or ranged with the other papal constitutions, but seemed to be, as it were, detached from the canon law. They

continued to be called by the same name when they were afterwards inserted in the body of the canon law. The first extravagantes are those of Pope John XXII, successor of Clement V. The last collection was brought down to the year 1483, and was called the *common extravagantes*, notwithstanding that they were likewise incorporated with the rest of the canon law. *Encyc. Lond.*

EXTUMÆ, reliques in churches and tombs.

Ex turpi causâ non oritur actio.—(An action arises not from a base cause.)

EXUPERARE, to overcome; to apprehend or take. *Leg. Edm. c. 2.*

EX VI TERMINI (from the force or meaning of the expression).

EY, **EA**, or **EE**, may come either from *ig*, an island, by melting the Saxon *g* into *y*, which is usually done; or from the Saxon *ea*, water, river, &c., or from *ieag*, a field, by the same kind of melting. *Gibson.*

EYE-WITNESS, an ocular evidence; one who gives testimony to facts seen with his own eyes.

EYRE [*eyre*, Fr., *iter*, Lat.], the court of justices itinerant; and justices in *eyre* are those only, which Bracton in many places calls *justiciarios itinerantes*. The eyre also of the forest is nothing but the justice-seat otherwise called, which is, or should, by ancient custom, be held every three years by the justices of the forest, journeying up and down for such purpose. *Cowell.*

EZARDAR [Indian], a farmer or renter of land in the districts of Hindoostan. *Encyc. Lond.*

F

F, a stigma put upon felons with a hot iron, on their being admitted to the benefit of clergy, now abolished. 7 & 8 Geo. IV., c. 28, § 6.

FABRIC LANDS [*ad fabricam reparandum*], property given towards the rebuilding or repairing of cathedrals and churches. Anciently, almost every person gave something by his will to the fabric of the cathedral or parish church where he lived. 12 Car. II., c. 8.

Facinus quos inquinat æquat.—(Guilt makes equal those whom it stains.)

FACIO, **UT DES** (I perform, that you give).

FACIO, **UT FACIAS** (I do, that you perform).

FACTA ARMORUM, feats of arms, jousts, tournaments, &c.

Facta tenet multa quæ fieri prohibentur. 12 Co. 125.—(Deeds contain many things which are prohibited to be done.)

FACTO, in fact; where anything is actually done.

FACTOR [*facteur*, Fr.], a substitute in mercantile affairs; an agent employed to sell goods or merchandize consigned or delivered to him by or for his principal, for a compensation commonly called factorage or commission. Hence he is often called a com-

mission-merchant or consignee; and the goods received by him for sale is called a consignment. He is a home factor when he resides in the same state or country with his principal, and a foreign factor when he resides in a different state or country. He differs from a broker in some important particulars, for he may buy and sell in his own name, but a broker must in that of his principal; he is also intrusted with the possession, management, controul, and disposal of the goods, and has a special property in, and a lien on, them, but a broker has none of these rights; yet neither can delegate his authority to another person, unless it is conferred by the usages of trade, or by the assent of his principal, express or implied. Factors have no incidental authority to barter the goods of their principal, or to pledge such goods for advances made to them on their own account, or for debts due by themselves; although they may certainly pledge them for advances lawfully made on account of their principal, or for advances made to themselves to the extent of their own lien on the goods. And they may pledge their principal's goods for the duties and other charges due thereon.

By the Factors' Act, 6 Geo. IV., c. 94, a person intrusted with and in possession of a bill of lading, or any of the warrants, certificates, or orders mentioned in the act, is to be deemed the true owner of the goods therein described, so far as to give validity to any contract or agreement made by him for the sale or disposition of the goods, or the deposit or pledge thereof, as a security for any money or negotiable instrument, if the buyer, disponent, or pawnee has not notice by the document or otherwise that such person is not the actual and *bonâ fide* owner of the goods. By 7 & 8 Geo. IV., c. 29, § 51, it is enacted, that if any factor or agent shall, for his own benefit, and in violation of good faith, deposit or pledge any goods, bill of lading, certificate, warrant, or order for delivery of goods, he shall be guilty of a misdemeanour, and be liable to fourteen years' transportation. While the 6 Geo. IV., c. 94, confirms *bonâ fide* sales, made in the ordinary course of business, in cases in which the purchaser had notice that the seller was merely an agent, it does not confirm *bonâ fide* advances made on goods, or on documents of title to goods, under the same circumstances. To obviate this discrepancy, to get rid of the litigation to which certain ambiguities in the 6 Geo. IV., c. 94, had given rise, and to facilitate commerce, the 5 & 6 Vict., c. 39, was passed. *Story's Agency*, 28.

FACTORAGE, the wages, commission, or allowance made to a factor by a merchant.

FACTORY, a house or district inhabited by traders embodied in one place.

FACTUM, a person's act or deed; anything stated or made certain.

Factum à Judice quod ad ejus officium non spectat non ratum est. 10 Co. 76.—(An action

of a Judge, which relates not to his office, is of no force.)

Factum non dicitur quod non perseverat. 5 Co. 96.—(It is not called a deed which does not persevere.)

Factum unius alteri nocere debet. Co. Lit. 152.—(The deed of one should hurt the other.)

Facultas probationum non est angustanda. 4 Inst. 279.—(The faculty of proofs is not to be narrowed.)

FACULTIES, court of, a jurisdiction or tribunal belonging to the archbishop. It does not hold pleas in any suits, but creates rights to pews, monuments, and particular places and modes of burial. It has also various other powers under 25 Hen. VIII., c. 21, in granting licenses of different descriptions, as a license to marry, a faculty to erect an organ in a parish church, to level a church-yard, to remove bodies previously buried. 2 *Chit. Gen. Prac.* 507.

FACULTY, a privilege granted to a man by favour and indulgence to do that which by law he ought not to do.

FACULTY OF ADVOCATES, the college or society of advocates in Scotland, who plead in all actions before the courts of sessions, justiciary, and exchequer.

FEDER-FEOH, the portion brought by a wife to her husband, and which reverted to a widow, in case the heir of her deceased husband refused his consent to her second marriage; i. e., it reverted to her family in case she returned to them. *Anc. Inst. Engl.*

FEMINA VIRO CO-OPERTA (a married woman).

FETICIDE, criminal abortion. It may be said of all the means resorted to in order to effect this abominable crime, that they are uncertain in their operation upon the foetus, that they always endanger the life of the mother, and that they sometimes destroy the mother without affecting the foetus. See **ABORTION.** *Beck's Med. Jurisprudence*, 238.

FAGGOT, a badge worn in popish times by persons who had recanted and abjured what was then adjudged to be heresy, as an emblem of what they had merited.

FAIDA, malice or deadly feud.

FAILURE OF RECORD, when an action is brought against a person, who alleges in his plea matter of record in bar of the action, and avers to prove it by the record; but the plaintiff saith *nul tiel record*, viz., denies there is any such record: upon which the defendant has a day given him by the court to bring it in: if he fail to do it, then he is said to fail of his record, and the plaintiff is entitled to sign judgment. *Terms de Ley.*

FAINT ACTION, a feigned action.

FAINT PLEADER, a fraudulent, false, or collusive manner of pleading to the deception of a third person. 3 *Edw. I.*, c. 19.

FAIR-PLEADER. See **BEAU-PLEADER.**

FAIRS [*foire*, Fr., *forum*, *nundinae*, Lat.], these institutions are very closely allied to markets. A fair, as the term is now generally understood, is only a greater species of

market, recurring at more distant intervals. Both are appropriated to the sale of one or more species of goods, the hiring of servants or labourers, &c.; but fairs are in most cases attended by a greater concourse of people, for whose amusement various exhibitions are got up. No fair can be holden without grant from the Crown, or a prescription which supposes such grant. And before a patent is granted, it is usual to have a writ of *ad quod damnum* executed and returned, that it may not be issued to the prejudice of a similar establishment already existing. The grant usually contains a clause that it shall not be to the hurt of another fair or market; but this clause, if omitted, will be implied in law: for if the franchise occasion damages either to the Crown or a subject, in this or any other respect, it will be revoked; and a person, whose ancient title is prejudiced, is entitled to have a *scire facias* in the Queen's name to repeal the letters patent. If her Majesty grant power to hold a fair or market in a particular place, the lieges can resort to no other, even though it be inconvenient. But if no place be appointed, the grantees may keep the fair or market where they please, or rather where they can most conveniently. As to times of holding fairs and markets, these are either determined by the letters patent appointing the fair or market, or by usage. *McCulloch's Comm. Dict.*

FAIT [*factum*], a deed or writing. See **DEED.**

FAIT ENROLLE, a deed enrolled, as a bargain and sale of freeholds.

FAITH, articles of. See **ARTICLES OF RELIGION.**

FAITOURS, evil doers; idle livers; vagabonds.

FALANG, a jacket or close coat. *Blount.*

FALCATURA, one day's mowing of grass, a customary service to the lord by his inferior tenants. *Falcata*, the fresh grass mowed and laid in swathes. *Falcator*, the tenant-mower. *Kenn. Glos.*

FALD, or **FALDA,** a sheep-fold. *Old Records.*

FALDAGE [*faldagium*, bar. Lat.], a fold course.

FALDÆ CURSUS, a sheep-walk.

FALD-FEE, a composition paid anciently by tenants for the privilege of faldage.

FALDISDORY [*falde*, Sax., a hedge, and *stop*, a place], the bishop's seat or throne within the chancel.

FALDSTOOL, or **FOLDSTOOL,** a place at the south side of the altar, at which the sovereigns kneel at their coronations.

FALDWORTH, a person of age, that he may be reckoned of some decennary. *Du Fresne.*

FALESIA, a hill, or down by the seaside. *Old Records.*

FALK-LAND. See **FOLKLAND.**

FALLOW-LAND, land ploughed, but not sowed, as for a second aration, and left uncultivated for one or more years with a view to exterminate weeds, and to enable it to fix those atmospherical elements which promote vegetable growth, and which are exhausted by repeated crops of the same kind.

FALLUM, an unexplained term for some particular kind of land.

FALMOTUM. See **FOLKEMOTE**.

Falsa demonstratio non nocet. 6 T. R. 676.
—(False description does not vitiate.)

Falsa orthographia, sive falsa grammatica, non vitiat concessionem. 9 Co. 48.—(False spelling or false grammar does not vitiate a grant.)

Sir John Doderidge says :—"Though the lawyer's latin cannot defend itself in *bello grammaticali*, will grammarians utterly condemn the use thereof? Methinks they should not, but might give lawyers leave to speak in their own dialect." *Treat. on Tenures; Noy's Max., Byth. ed.* 266.

FALSE IMPRISONMENT, restraining personal liberty without lawful authority, for which offence the law has not only decreed a punishment, as a heinous public crime, but has also given a private reparation to the party as well by removing the actual confinement for the present by *habeas corpus*, as by subjecting the wrongdoer to an action of trespass, &c., usually called an action of false imprisonment, on account of the damage sustained by the loss of time and liberty. 3 *Step. Comm.* 480.

FALSE JUDGMENT, *writ of*, a process that lies, by way of appeal, to the superior courts from inferior courts not of record, to amend errors in their proceedings.

FALSE LATIN. When law proceedings were written in Latin, if a word were significant, though not good Latin, yet an indictment, declaration, or fine should not be made void by it; but if the word were not Latin, nor allowed by the law, and it were in a material point, it made the whole vicious. 5 *Rep.* 121; 2 *Nels.* 830.

FALSE NEWS, *spreading*, to make discord between the sovereign and nobility, or concerning any great man of the realm, is a misdemeanour, punishable at common law by fine and imprisonment, which is confirmed by statutes, Westm. 1, 3 Edw. I., c. 34; 2 Rich. II., st. 1, c. 5; and 12 Rich. II., c. 11.

FALSE OATH. See **PERJURY**.

FALSE PERSONATION to obtain property. Frauds of this description were indictable at common law as misdemeanours, and punishable by fine and imprisonment, but are now made penal by the express provisions of acts of Parliament. By 7 Geo. IV., c. 16, § 38, and 2 Wm. IV., c. 53, § 49, to personate any soldier, in order fraudulently to receive his pay, pension, wages, or prize-money, is felony, and punishable by transportation for life, or such term of years as the court shall adjudge; or if the personation be for the purpose of obtaining prize-money, with transportation for not less than seven years. By 11 Geo. IV. and 1 Wm. IV., c. 20, § 84, to personate any seamen or marine with a like fraudulent intention, is also felony, and punishable with transportation for life, or not less than seven years, or imprisonment for not more than four or less

that two years. By 11 Geo. IV. and 1 Wm. IV., c. 66, § 7, the false personation of an owner of Bank of England or South Sea stock, or the stock of any body corporate or society established by charter or act of Parliament, or an owner of a dividend, and thereby endeavouring to transfer his share or receive his dividend, is a felony, and liable to a similar punishment. By 32 Geo. III., c. 56, if any person shall personate a master, and give a false character to a servant, or assert in writing that a servant has been hired for a period of time or in a station, or was discharged at any time, or had not been hired in any previous service, contrary to truth; or if any person shall offer himself as a servant, pretending to have served where he has not served, or with a false certificate of character, or shall alter a certificate, or shall pretend not to have been in any previous service, contrary to truth, such offenders are liable, on conviction before two justices of the peace, to be fined 20*l.*, and in default thereof, to be imprisoned with hard labour for any time not more than three nor less than one calendar month. By 6 Vict., c. 18, § 83, the false personation of voters at an election of a member of Parliament, is made a misdemeanour, punishable with imprisonment and hard labour for any term not exceeding two years.

FALSE PLEA. See **SHAM PLEA**.

FALSE PRETENCES, *obtaining property by*. This offence, though closely allied to larceny, is distinguishable from it, as being perpetrated through the medium of a mere fraud; it is a misdemeanour at common law, and punishable by fine and imprisonment. But by 7 & 8 Geo. IV., c. 29, § 53, after reciting that "a failure of justice frequently arises from the subtle distinction between larceny and fraud," it is provided, that if any person shall by any false pretence obtain from any other person any chattel, money, or valuable security, with intent to cheat or defraud any person of the same, he shall be guilty of a misdemeanour, and be transported for seven years, or punished by fine or imprisonment, or both, as the court shall award; provided always, that if, upon the trial of any person indicted for such misdemeanour, it shall be proved that he obtained the property in question in any such manner as to amount in law to larceny, he shall not by reason thereof be entitled to be acquitted of such misdemeanour.

FALSE PROPHECIES, with intent to disturb the peace, are unlawful and penal, as they raise enthusiastic jealousies in the people, and terrify them with imaginary fears. They are punishable as misdemeanours. By 5 Eliz., c. 15, the penalty for the first offence is a fine of 10*l.*, with one year's imprisonment; for the second, forfeiture of all goods and chattels, and imprisonment during life.

FALSE RETURN by a sheriff, mayor, &c., to a writ is remedied by a special action on the case.

FALSE SIGNAL, or **LIGHTS**, exhibiting, with intent to bring ships into danger, is a capital felony, and punishable with death.

FALSE VERDICT. Formerly, if a jury gave a false verdict, the party injured by it might sue out and prosecute a writ of attainst against them, either at common law or on the statute 11 Hen. VII., c. 24, at his election, for the purpose of reversing the judgment and punishing the jury for their verdict; but not where the jury erred merely in point of law, if they found according to the Judge's direction. The practice of setting aside verdicts and granting new trials, however, has so superseded the use of attainsts, that there is no instance of one to be found in our books of reports later than in the time of Elizabeth; and it is now altogether abolished by 6 Geo. IV., c. 50, § 60.

FALSE WEIGHTS AND MEASURES. By 5 Geo. IV., c. 74, 6 Geo. IV., c. 12, and 5 & 6 Wm. IV., c. 63 (repealing the former acts on the subject), standards are fixed for length, weight, and capacity, and it is provided that all contracts for sale by weight or measure, where no special agreement is made to the contrary, shall be taken to refer to the standards so established. The 55 Geo. III., c. 43, provides for the punishment of offenders using false and deficient measures. The 37 Geo. III., c. 143, gives magistrates in petty sessions summary jurisdiction herein. See 7 & 8 Geo. IV., c. 38.

FALSI CRIMEN, fraudulent subornation or concealment, with design to darken or hide the truth, and make things appear otherwise than they are. It is committed:—1, by words, as when a witness swears falsely; 2, by writing, as when a person antedates a contract; 3, by deed, as selling by false weights and measures.

FALSIFYING JUDGMENTS, reversing them.

FALSIFYING A RECORD, a high offence against public justice, punishable by 7 & 8 Geo. IV., c. 29, § 21.

FALSING OF DOOMS, an appeal from the sentence of a court. *Scotch Law*.

FALSONARIUS, a forger.

FALSO RETURNO BREVIUM, a writ that lay against a sheriff, who had execution of process, for a false return. *Reg. Jud.* 43.

Fama, fides, et oculus non patiuntur ludum. 3 Buls. 226.—(Fame, faith, and eye-sight do not suffer a cheat.)

Fama, quæ suspicionem inducit, oriri debet apud bonos et graves, non quidem malevolos et maledicos, sed providas et fide dignas personas, non semel sed sæpius, quia clamor minuit et defamatio manifestat. 2 Inst. 52.—(Report, which induces suspicion, ought to arise from good and grave men, not indeed from malevolent and malicious men, and even from provident and credible persons, not only once, but frequently; for clamour diminishes, and defamation manifests.)

FAMACIDE [*fama*, Lat., reputation, and *cardo*, to kill], a slanderer. *Scott*.

FAMILIA, all the servants belonging to a

particular master; also a portion of land sufficient to maintain one family.

In the widest sense among the Romans, it signified the totality of that which belongs to a Roman citizen who is *sui juris*, and therefore a *paterfamilias*.

But the word "*familia*" is sometimes limited to signify persons, that is, all those who are in the power of a *paterfamilias*, such as his sons (*filiifamilias*), daughters, grandchildren, and slaves. *Smith's Dict. Antiq.*

FANATIO. See **FENCE-MONTH**.

FARANDMAN, a traveller or merchant stranger.

FARDEL OF LAND, the fourth part of a yard-land. Noy says an eighth only, because, according to him, two fardels make a nook, and four nooks a yard-land. *Compl. Lawy.* 57.

FARDING-DEAL, or **FARUNDEL OF LAND**, the fourth part of an acre.

FARE, a voyage or passage by water; also the money paid for a passage either by land or by water.

FARINAGIUM, toll of meal or flour.

FARLEU, money paid by tenants in lieu of a heriot. It is often distinguished to be the best goods, as *heriot* is the best beast.

FARLINGARII, whoremongers and adulterers.

FARUNDEL OF LAND. See **FARDING-DEAL**.

FARM, or **FERM** [*firma*, Lat., *feorme*, Sax., food, and *feorman*, to feed], a large messuage of land, taken by a lease under a yearly rent, payable by the tenant. It is a collective word, consisting of many things, as a messuage, land, meadow, pasture, wood, common, &c. In Lancashire a farm is called *ferm-holt*; in the north, a *tack*; and in Essex, a *wike*. *Terms de Ley*.

FARMER, one who cultivates hired ground.

FARTHING [*feowen*, Sax., four], the fourth of a penny.

FARTHING OF GOLD, an ancient coin, containing in value the fourth part of a noble.

FARTHING OF LAND, a large quantity of land, but its extent is not known.

FASINS, a faggot of wood.

FAST-DAY, a day of mortification by religious abstinence.

FASTENS EEN, or **EVEN** [*pastel-abend*, Low Sax.], Shrove-Tuesday, the succeeding day being Ash-Wednesday, the first of the Lenten fast.

FASTERMANS, or **FASTING-MEN** [*homines habentes*, Lat.], men in repute and substance; pledges, sureties or bondsmen, who, according to the Saxon polity, were *fast* bound to answer for each other's peaceable behaviour. *Encyc. Lond.*

FASTI, *fas* signifies divine law; the epithet *fastus* is properly applied to anything in accordance with divine law, and hence those days upon which legal business might without impiety (*sine piaculo*) be transacted before the prætor, were technically denominated *fasti dies*, i. e., lawful days. Varro

and Festus derive *fastus* directly from *fari* (Varro, *De Ling. Lat.* vi., 2; Festus, s. v. *Fasti*), while Ovid (*Fast.* i. 47) may be quoted in support of either etymology.

The sacred books in which the *fasti dies* of the year were marked, were themselves denominated *fasti*; the term, however, was employed in an extended sense to denote registers of various descriptions, and many mistakes have arisen among commentators from confounding *fasti* of different kinds. Consult *Smith's Dict. of Antiq.* for the several *fasti*.

Fatetur facinus qui judicium fugit. 3 Inst. 14.

—(He who flees judgment, confesses his guilt.)

FATUA MULIER, a whore.

FATUOUS PERSONS, idiots.

Fatuus, apud jurisconsultos nostros, accipitur pro non compos mentis; et fatuus dicitur, qui omnino desipit. 4 Co. 128.—(Fatuus, among our jurisconsults, is understood for a man not in a right mind; and he is called "*fatuus*" who is altogether foolish.)

FAUSETUM, a faucet, musical pipe, or flute.

FAUTORS, favorers or supporters of others; abettors of crimes, &c.

FAVOR, challenge to. See CHALLENGE.

Favorabilia in lege sunt fiscus, dos, vita, libertas. Jenk. Cent. 94.—(Things favourably considered in law are the treasury, dower, life, and liberty.)

Favorabiliores sunt executiones aliis processibus quibuscunque. Co. Lit. 289.—(Executions are more preferred than all other processes whatever.)

Favores ampliandi sunt; odia restringenda. Jenk. Cent. 186.—(Favours are to be enlarged; things hateful restrained.)

FEAL, tenants by knight-service, whomos re to their lords to be *feal* and *leal*, i. e., faithful and loyal.

FEAL, and DIVOT, a right in Scotland, similar to the right of turbary in England, for fuel, &c.

FEALTY [*fidelitas*, Lat., *feaulté*, Fr.], the special oath of fidelity or mutual bond of obligation between a lord and his tenant; the general oath being the allegiance performed by every subject to his sovereign, but this is better known by its more significant appellation of the oath of allegiance. Although foreign jurists consider fealty and homage as convertible terms, because in some continental countries they are blended so as to form one engagement, yet they are not to be confounded in our country, for they do not imply the same thing, *homage* being the acknowledgment of tenure, and *fealty*, the vassal-oath of fidelity, being the essential feudal bond, and the animating principle of a feud, without which it could not subsist. Fealty comprehends the following obligation, viz., 1. *Incolume*, that the tenant do no bodily harm to his lord; 2. *Tutum*, that he do no secret damage to him in his house; 3. *Honestum*, that he damage not his reputation; 4. *Utile*, that he do no damage to him in his possessions;

5. *Facile*; and 6. *Possibile*, that he render it easy for the lord to do any good, and not make that impossible to be done which was before in his power to do. *Leg. Hen. I.*, c. 5.

FEASTS, anniversary days of rejoicing, either on a civil or religious occasion. Opposed to fasts.

Our feasts are either (1) *immoveable*, such as Christmas day, the Circumcision, Epiphany, Candlemas day, Lady day, All Saints and All Souls, besides the days of the several apostles, St. Peter, St. Thomas, &c.; these are always celebrated on the same day of the year; or (2) *moveable*, such as Easter, which fixes all the rest, as Palm Sunday, Good Friday, Ash Wednesday, Sexagesima, Ascension day, Pentecost, Trinity Sunday, &c.

The four principal immoveable feasts of the year, which the English jurisprudence has assigned for the reservation or payment of rents on leases, are, the annunciation of the blessed Virgin Mary on Lady day, being the 25th of March; the nativity of St. John the Baptist, held on the 24th of June; the Feast of St. Michael the Archangel, on the 28th of September; and that of St. Thomas the Apostle, on the 21st of December. 5 & 6 Edw. VI., c. 3; 3 Jac. I., c. 1; and 12 Car. II., c. 30.

FEDERAL GOVERNMENT, such a government as consists of several independent provinces or states, united under one head; but the degree to which such states give up their individual rights may be very different, although as relates to general politics, they have one common interest, and agree to be governed by one and the same principle. Such is the government of the United States of America.

FEE [*feoh*, Sax., *fee*, Dan., cattle, *feudum*, Low Lat., *feu*, Scot.], property, peculiar. Also an estate of inheritance divided into three species:—(1) fee simple absolute; (2) qualified or base fee; (3) fee-tail, formerly fee conditional.

FEE-CONDITIONAL. See CONDITIONAL FEE.

FEE-EXPECTANT, where lands are given to a man and his wife, and the heirs of their bodies.

FEE-FARM-RENT, where an estate in fee is granted, subject to a rent in fee of at least one-fourth of the value of the lands at the time of its reservation, and such rent appears to be called fee farm, because a grant of lands reserving so considerable a rent, is indeed only letting lands to farm in fee simple, instead of the usual method of life or years. 2 Step. Com. 27.

FEE-SIMPLE, the largest interest in land known to our law, for it is the entire property therein. It is created in deeds by the word "*heirs*," without naming what sort of heirs, so that the estate will descend to any heirs, whether male or female, lineal or collateral, generally, absolutely, and simply. It is essential that the word "*heirs*" be in the plural number, in order to create a fee-

simple, for if land be conveyed by deed, "to a man for ever," or "to a man and his assigns for ever," or "to a man and his heir," in the *singular* number, such phrases will vest in him only an estate for life. In order to convey an estate in fee-simple to a corporation, the word "*successors*" should be used instead of "*heirs*." This rule, however, does not apply to a devise of fee-simple by will, for it is enacted by the twenty-eight section of the 1st Vict., c. 26 (commonly known as the Wills' Act), that where any real estate shall be devised without words of limitation (*i. e.*, heirs or successors), it shall be construed to pass the whole interest which the testator had power to dispose of, unless the contrary intention should appear by the will.

The law has annexed to every estate and interest in lands, tenements, and hereditaments, certain peculiar incidents, rights, and privileges, which generally are so inseparably attached to those estates, that they cannot be restrained by any proviso or condition whatever.

The incidents annexed to a fee-simple are as follow :—

1. A power of alienation, that is, the tenant can convey to another his whole interest or any part of it.

2. It is subject to the husband's courtesy and the wife's dower.

3. It is liable to all sorts of debts owing by the ancestor. Fee-simple estates were originally liable in the heir's hands only for the ancestor's specialty debts (*i. e.*, debts under seal, as a bond, &c.), but if the heir conveyed away the estate before action brought, the specialty creditor was without remedy, and this was the case if the ancestor by his will devised the estate to any person, for the creditor had no remedy against such person, who is technically called the devisee. The legislature perceived that such a doctrine was not exactly in accordance with justice, and interfered. The first act of Parliament passed to remedy this grievance was the 2 & 4 Will. & Mary, c. 14, made perpetual by the 6 & 7 Will. III., c. 14, which gave to a specialty creditor a remedy against the heir and devisee *jointly*, and if the heir aliened before action brought, he was liable to the amount of the value of the land, unless the land were *bona fide* aliened, *i. e.*, conveyed for a valuable consideration. It is to be observed, that no remedy was given by these acts to the creditor against the devisee *alone*; if there were no heir, and it was decided that the acts only applied to specialties on which an action of *debt* lies, such as bond debts or covenants for the payment of sums certain, but not for damages, for breaches of covenants, or contracts under seal. But, at length, the 1 W. IV., c. 47, was passed, repealing the above acts, and remedied these defects. It operates upon the wills of all persons in being at the passing of it, and upon all wills thereafter to be made by all persons whomsoever. The second section makes devises of real estate

void, as against the specialty creditors, by bond, covenant, or otherwise. The third section gives them a remedy, by actions of debt or covenant, against the heir and devisee, or the devisee of such first named devisee, and if there be no heir, then against the devisee (§ 4). § 6 makes the heir liable to the amount of the value of the lands, if he alien before action brought; but lands *bona fide* aliened before action brought, are not liable to such debts in the purchaser's hands. § 8 gives similar remedies against a devisee, if he alien before action brought. Before this act became the law of the country, a trader who died before he was declared a bankrupt, leaving real estate, this was not liable to his simple-contract debts (*i. e.*, those not under seal, as a bill of exchange, &c.); but by the ninth section of this act, which repealed the 47 Geo. III, sess. 2, c. 74, it was enacted, "that when any person, being at the time of his death a trader within the bankrupt laws, shall die seised of or entitled to any real estate which he shall not by his last will have charged with the payment of his debts, and which would have been assets for the payment of his debts due on any specialty in which the heirs were bound; the same shall be assets to be administered in courts of equity for the payment of all the just debts of such person, *as well debts due on simple contract as on specialty*; provided that all creditors by specialty shall be paid the full amount of their debts before any creditors by simple contract or by specialty, in which the heirs are not bound, shall be paid any part of their demands." Thus real estate belonging to traders was liable to all sorts of debts, but such estates belonging to other descriptions of persons were still not rendered liable to simple contract debts; at length, however, the 3 & 4 Wm. IV., c. 104, obliterated all traces of such a grievous common law doctrine by enacting, that after the 29th of August, 1833, when any person shall die seised of or entitled to *any estate or interest* in lands, tenements, or hereditaments, corporeal or incorporeal, or other real estate, whether *freehold, customaryhold, or copyhold*, which he shall not by his last will have charged with or devised, subject to the payment of his debts, the same shall be assets to be administered in courts of equity for the payment of the just debts of such persons, *as well debts due on simple contract as on specialty*; and that the heir at law, customary heir, or devisee of such debtor shall be liable to all the same suits in equity, at the suit of any of the creditors of such debtor, whether creditors by simple contract or by specialty, as the heir at law or devisee of any person who died seised of freehold estates, was, before the passing of the act, liable to in respect of such freehold estates, at the suit of creditors by specialty, in which the heirs were bound. And it is provided, that, in the administration of assets by courts of equity under the act, all creditors by spe-

cialty, in which the heirs are bound, shall be paid the full amount of the debts due to them, before any of the creditors by simple contract or by specialty, in which the heirs are not bound, shall be paid any part of their demands. The personal estate is the first and natural fund for the payment of debts; and though a testator charge his real estate, by his will, with the payment of his debts, yet this will not exempt his personal estate from being first applied for that purpose, *unless* the testator expressly exonerate it.

4. It is liable to Crown debts; and they continue liable, into whose hands soever they pass, even though conveyed by the debtor *bond fide* to a purchaser for valuable consideration, unless there have been a proper and legal discharge of such debt, which is by an acquittance from the officers of the Exchequer, usually called a *quietus*, because it generally concluded with these words,—*abinde recessit quietus*.

5. It is forfeited to the Crown by attainder of treason of the tenant, which forfeiture relates back to the time when the treason was committed, so as to avoid all intermediate sales and incumbrances, but not those made before the crime. In cases of felony, the estate is only forfeited for a year and a day. 2 Bl. Com. 104; Watk. Conv. 133.

FEE-TAIL. See TAIL.

FEES, certain perquisites allowed to officers in the administration of justice, as a recompence for their labour and trouble, ascertained either by acts of Parliament, or by ancient usage, which gives them an equal sanction with an act of Parliament.

FEIGNED ACTION. See FAINT-ACTION.

FEIGNED DISEASES, simulated maladies.

Diseases are generally feigned from one of three causes—fear, shame, or the hope of gain. Thus the individual ordered on service will pretend being afflicted with various maladies, to escape the performance of military duty; the mendicant to avoid labour, and to impose on public or private beneficence; and the criminal, to prevent the infliction of punishment. The spirit of revenge, and the hope of receiving exorbitant damages, have also induced some to magnify slight ailments into alarming illness. On this subject, Foderé (vol. ii. p. 452) observes, at the time when the conscription was in full force in France, “that it is at present brought to such perfection, as to render it as difficult to detect a feigned disease as to cure a real one.”

Zacchias has given five general rules for the detection of feigned diseases:—

1. That inquiry should be made of the relatives and friends of the suspected individual as to his physical and moral habits, and as to the state of his affairs, and what may possibly be the motive for feigning disease—particularly whether he is not in immediate danger of some punishment, from which this sickness may excuse him.

2. Compare the disease under examination with the causes capable of producing

it; such as the age, temperament, and mode of life of the patient.

3. The aversion of persons feigning disease to take proper remedies. This, indeed, will occur in real sickness; but it rarely happens when severe pain is present.

4. Particular attention should be paid to the symptoms present, and whether they necessarily belong to the disease.

5. Follow the course of the complaint, and attend to the circumstances which successively occur. *Beck's Med. Jurisp. ch. i.*

FEIGNED ISSUE, a proceeding whereby an action is supposed to be brought by consent of the parties to determine some disputed right, without the formality of pleading, saving thereby both time and expence. It was ordered either by a court of law or equity, or by a Judge under the Interpleader Act, 1 & 2 Win. IV., c. 58. But the 8 & 9 Vict., c. 109, § 19, after reciting that many important questions are now tried in the form of feigned issues, by stating that a wager was laid between two parties interested in respectively maintaining the affirmative and the negative of certain propositions; but that such questions may be as satisfactorily tried without such form, enacts, that in every case where any court of law or equity may desire to have any question of fact decided by a jury, it shall be lawful for such court to direct a writ of summons to be sued out by such person or persons as such court shall think ought to be plaintiff or plaintiffs against such person or persons as such court shall think ought to be defendant or defendants therein, in the form set forth in the second schedule to the act annexed, with such alterations or additions as such court may think proper; and thereupon all the proceedings shall go on and be brought to a close in the same manner as is now practised in proceedings upon a feigned issue.

FELAGUS, a companion, but particularly a friend who was bound in the *decennary* for the good behaviour of another.

FELD, field; in composition, wild. *Blount*.

FELE, or FEAL HOMAGERS [*fai*, Sax., *fides*, Lat.], faithful subjects.

FELLOW [*quasi*, to follow, *Minshew*; from *fe*, Sax., faith, and *lag*, bound, *Junius*; *fallow*, Scot.], a companion; one with whom we consort; a member of a college or corporate body.

FELLOW-HEIR, co-heir; partner of the same inheritance.

FELO DE SE, a self-murderer; one who feloniously commits self-slaughter. The barbarous mode of burying such persons is abolished; the only legal consequences of the crime are now forfeiture and deprivation of Christian rites. 4 Geo. IV., c. 52, § 1.

FELON [*felon*, Fr., *felo*, low Lat., *fel*, Sax.], one who has committed a capital crime.

Felonia implicatur in quolibet proditiōe. 3 Inst. 15.—(Felony is implied in every treason.)

Felonia, ex vi termini, significat quodlibet capitale crimen felleo animo perpetratum. Co.

Lit. 391.—(Felony, by force of the term, signifies some capital crime perpetrated with a malignant mind.)

FELONIOUS HOMICIDE, killing a human creature without justification or excuse. It is of two kinds:—1. Killing one's self, or *felo de se*. 2. Killing another.

FELONY [*felonie*, Fr., *felonia*, Lat.; some deduce it from *φῆλος*, Gk., a deceiver, from *fallo*, Lat., to deceive; *Spelman* derives it from the Teutonic or German *fee*, a fieu or fief, and *lon*, price or value], a crime which occasions the forfeiture of lands or goods.

FEME-COVERT, a married woman. See **COVERT-BARON**.

FEME-SOLE, an unmarried woman.

FEMICIDE, the killing of a woman.

FENCE, a hedge, ditch, or other enclosure of land for the better manurance and improvement of the same.

FENCE-MONTH, or **DEFENCE-MONTH**, a time during which deer in forests, &c., fawn; and their hunting is unlawful. It begins fifteen days before Old Midsummer, and ends fifteen days after it. *Manw.*, pt. 2, c. 13.

FENERATION [*feneratio*, Lat.], usury; the gain of interest; the practice of increasing money by lending.

FENGELD, a tax or imposition, exacted for the repelling of enemies.

FEOD, or **FEUD**, the right which the vassal had in land, or some immovable thing of his lord, to use the same and take the profits thereof, rendering unto the lord such duties and services as belonged to the particular tenure; the actual property in the soil always remaining in the lord. *Spelm. Feuds and Tenures*.

FEODAL, of or belonging to the feod or feud.

FEODAL SYSTEM. See **FEUDAL SYSTEM**.

FEODALITY, fealty. See **FEALTY**.

FEODARY, or **FEUDARY**, an officer of the court of wards, appointed by the master of that court under 32 Hen. VIII., c. 26, whose business it was to be present with the escheator in every county at the finding of offices of lands, and to give in evidence for the king, as well concerning the value as the tenure; and his office was also to survey the lands of the ward, after the office found, and to rate it. He also assigned the king's widows their dower; and received all the rents, &c. Abolished by 12 Car. II., c. 24.

FEODATORY, or **FEUDATARY**, the tenant who held his estate by feudal service.

Feodum est quod quis tenet ex quacunque causa, sive sit tenementum sive redditus. Co. Lit. 1.

—(A fee is that which any one holds from whatever cause, whether tenement or rent.)

Feodum simplex quia feodum idem est quod hæreditas, et simplex idem est quod legitimum vel purum; et sic feodum simplex idem est quod hæreditas legitima vel hæreditas pura. Lit. § 1.—(A fee-simple, so called because fee is the same as inheritance, and simple is the

same as legitimate or pure; and thus fee-

simple is the same as a legitimate inheritance, or pure inheritance.)

Feodum talliatum, i. e., *hæreditas in quodam certitudinem limitata*. Lit. § 13.—(Fee-tail; that is, an inheritance limited to certain bounds.)

FEODUM. See **FEOD**.

FEODUM LAICUM, a lay-fee.

FEODUM MILITIS, a knight's fee.

FEOFFEE, one put in possession.

FEOFFEE TO USES, the person in whom, before the Statute of Uses, the legal seisin or feudal tenancy of the land was vested, the substantial and beneficial ownership or use being in the *cestui que use*. The statute destroyed the estate of the feoffee to uses, and conveyed the possession to the *cestui que use*, who has now the legal estate, his use being executed by the statute.

FEOFFER, one who gives possession of anything.

FEOFFMENT, a common law conveyance of corporeal hereditaments, operating by transmutation of possession, the actual occupancy being delivered by a ceremony called livery of seisin. It derives its name from the feudal system, and is the *donatio feudi*. A writing or charter was not originally necessary until the Statute of Frauds, which rendered it imperative. The most appropriate words in a feoffment are "give and enfeoff." If no memorandum of livery of seisin be indorsed on the feoffment, parol evidence may be given of its having actually been given, or it will be presumed, after the expiration of twenty years, as possession for that length of time would bar a possessory action. A feoffment will operate by way of estoppel, so as to bind the future estate of the feoffer during his own life. By 8 & 9 Vict., c. 106, § 3, it is enacted, that a feoffment made after the first day of October, 1845, other than a feoffment made under a custom by an infant, shall be void at law, unless evidenced by deed; § 4 declares that a feoffment shall not have any tortious operation.

A feoffment is the only conveyance by which a tenant for years, by elegit, statute merchant or staple, or a copyholder, can create an estate of freehold by disseisin. Bodies corporate usually convey by feoffment, because they cannot stand seised to a use: consequently they cannot adopt any form of conveyance founded upon the Statute of Uses, as a bargain and sale enrolled, or a lease and release, where the lease is by bargain and sale operating under the statute, and not a common law lease, under which actual entry has taken place. 2 *Sand. Uses*, 1; *Watk. Conv.* 295; *Burt. Comp.* 268.

FEOFFMENT TO USES. A feoffment is a conveyance at the common law, so far as it conveys the land to the feoffee; if it is directed to operate to, or to the use of the feoffee, it has no other operation than at the common law: but if it is directed to operate to the use of any other person, then, though it be a common law conveyance, so far as it conveys the land to the feoffee, it derives its

effect from the Statute of Uses, so far as the use is limited by it to the person or persons in whose favour it is declared. Thus, if A. be desirous to convey to B. in fee, he may do so by enfeoffing a third person, C. (of course, with livery of seisin), to hold to him and his heirs to the use of B. and his heirs; the effect of which will be to convey the legal estate in fee-simple to B. For, since the Statute of Uses, the legal estate passes to the feoffee by means of the livery, as it would have done before; but no sooner has this taken place, than the limitation to uses begins to operate, and C. thereby becomes seised to the use defined or limited; the consequence of which is, that by force of the legislative enactment the legal estate is *eo instanti* taken out of him, and vests in B., for the like interest as was limited in the use, that is, in fee-simple. B. thus becomes the legal tenant as effectually as if the feoffment had been made to himself, and without the intervention of a trustee. This method is not much practised, in consequence of the livery of seisin. 2 *Sand. Uses and Trusts*, 13; *Watk. Conv.* 288.

FEOFFOR. See FEOFFER.

FEOH, or FIOH, cattle; money.

FEORM, a certain portion of the produce of the land due by the grantee to the lord, according to the terms of the charter.

FERÆ NATURÆ, beasts and birds that are wild, in opposition to the tame; such as foxes, wild-geese, and the like, wherein no man may claim a property, unless under particular circumstances, as where they are confined or made tame, &c.

FERDELLA TERRÆ, a fardel-land; ten acres; or perhaps a yard-land.

FERDINGUS, apparently a freeman of the lowest class, being named after the *cotseti*. *Anc. Inst. Eng.*

FERDWIT [*ferd*, Sax., army, and *wite*, punishment], quit of manslaughter committed in the army; also a fine imposed on persons for not going forth in a military expedition. *Cowell*.

FERIÆ, holidays; generally speaking, days or seasons during which free born Romans suspended their political transactions and their law-suits, and during which slaves enjoyed a cessation from labour. *Cic. De Leg.*, ii. 8, 12. All *feriæ* were thus *dies nefasti*.

All *feriæ* were divided into two classes—*feriæ publicæ* and *feriæ privatæ*. The latter were only observed by single families or individuals, in commemoration of some particular event which had been of importance to them or their ancestors. *Smith's Dict. Antiq.*

FERLING, the fourth part of a penny; also the quarter of a ward in a borough. *Old Records*.

FERLINGATA, a fourth part of a yard-land.

FERM, a house and land let by lease.

FERMARY, an hospital.

FERMIER, one who farms any public revenue in France.

FERMISONA, the winter season for killing deer.

FERNIGO, a piece of waste ground where ferns grow.

FERRIAGE, the fare paid at a ferry.

FERSPEKEN, to speak suddenly.

Festinatio justitiæ est noverca infortunii. Hob. 97.—(Delay of justice is the stepmother of misfortune.)

FESTING-MEN. See FASTING-MEN.

FESTING-PENNY [*festnian*, Sax., to confirm], earnest given to servants when hired or retained in service.

FESTUM, a feast.

FESTUM STULTORUM, the feast of fools.

FEU, or FEW, a free and gratuitous right to lands, made to one for service to be performed by him, according to the proper nature thereof. *Feu*, in Scotland, means vassal-tenure, in contradistinction to wardholding, or military tenure. *Scotch Law*.

FEU, or FEW ANNUAL, the rent due by the *reddendo* of the property of the ground, before the house was built within burgh. *Ibid.*

FEUD. See DEADLY FEUD.

FEUDAL. See FEODAL.

FEUDAL SYSTEM, that scheme of tenure which the Conqueror introduced into this country, thereby displacing the Saxon laws of property. See TENURE.

FEUDBOTE, a recompense for engaging in a feud or quarrel.

FEUDIST, a writer on feuds, as Cujacius, Spelman, &c.

Feudum. Fidelis ero verè domino vero meo.—(A fee. I will be faithful truly to my true lord.)

FIAR, opposed to *life renter*. The person in whom the property of an estate is vested, subject to the life renter's estate. *Scotch Law*.

FIARS PRICES, the value of grain in the different counties of Scotland, fixed yearly by the respective sheriffs, in the month of February, with the assistance of juries; and these regulate the prices of all grain stipulated to be sold at the *fiar* prices; and also all cases where no price has been stipulated.

FIAT (let it be done), a decree; a short order or warrant of some Judge for making out and allowing certain processes.

FIAT IN BANKRUPTCY, the authority of the Lord Chancellor to a commissioner of bankrupts, authorising him to proceed in the bankruptcy of a trader mentioned therein. The practice as altered by recent statutes is as follows:—

The three grand requisites ascertained, viz., a trading, an act of bankruptcy, and a sufficient petitioning creditor's debt, proceed to obtain fiat.

The petitioning creditor makes an affidavit of his debt before a Master Ordinary or Extraordinary in Chancery, not being the solicitor to the fiat.

Printed forms throughout the practice are used, requiring only names, dates, and sums to be supplied.

It cannot be re-sworn, but the court will sometimes allow an error to be amended by a supplemental affidavit.

The bond to the Lord Chancellor is suspended.

Leave the affidavit (endorsing, in country cases, upon it the name and residence of the agent and country solicitor) at the office of the secretary of bankrupts (searching if any docket already struck). The secretary makes an entry of it in the docket book, and prepares the petition, and annexing to it the affidavit, obtains the fiat; 10*l.* are paid for it.

If a town fiat be sued out against a country trader, or *vice versa*, annex an affidavit of the petitioning creditor (or his solicitor) to the petition, that at least one other creditor besides himself resides at the place where fiat is sought to be executed, and to execute it there, would be beneficial to the general body of creditors.

If two or more persons apply to strike a docket against the same person at the same time, and they are all correctly prepared to do it, it shall be determined by lot; but if only one be correctly prepared, the fiat is awarded to him. If a fiat be not bespoken within one calendar month after docket struck, it is considered to have expired.

No docket is considered as struck until entered in the docket book, which is open to inspection during office hours, on payment of 1*s.*

Every fiat is to be transmitted by the secretary of bankrupts to the court to which it is directed, and forthwith opened, unless such court postpone the opening: if fiat be not opened by the petitioning creditor within three days after its transmission, or such postponed time, the court is authorised to open it within fourteen days then next following, upon the application of any other creditor, upon proof of his debt being sufficient, and of the other requisites to support a fiat. No fiat to be issued to the petitioning creditor, his solicitor or agent.

If it be proved that there is probable cause for believing the person against whom a fiat has been issued is about to quit England, or to remove or conceal his property with intent to defraud, the court, authorised to act in the prosecution of the fiat, may issue a warrant to arrest him and to seize his property, wheresoever he or they may be found, and him and them safely keep until the expiration of the time allowed for opening the fiat, or adjudication, and then to be dealt with according to the bankrupt laws. Such person may apply at any time to such court for an order or rule on the petitioning creditor to show cause why he should not be discharged, or his property delivered up; and such court may either discharge or make absolute such order or rule, and direct how the costs of it are to be paid; and a dissatisfied party may appeal to the Court of Review. 5 & 6 Vict., c. 122, §§ 4 to 6.

The usual grounds upon which a fiat is annulled, are:—If the proceedings be so

defective that its validity cannot be supported at law. For certain irregularities. If bankrupt, after docket struck, give to the creditor who struck it any money, security, or other satisfaction for his debt, or any part thereof. Fraud practised upon the court in issuing the fiat. If fiat sued out to effect a particular purpose foreign to the legitimate object of a fiat. If sued out by one of several creditors in breach of good faith towards the others. If bankrupt pay all his creditors in full, with interest. When all creditors, who have proved, consent, after second sitting, to its annulment, the choice of assignees is then adjourned, to give an opportunity of presenting a petition for such purpose. If at any meeting after bankrupt's last examination (held in pursuance of twenty-one days' notice thereof in Gazette) any composition, or security for composition, be offered by the bankrupt or his friends, and accepted by nine-tenths in number and value of creditors assembled, another meeting to decide upon it shall then be appointed (whereof such notice as aforesaid shall be given), at which meeting, if nine-tenths of the creditors in number and value then present agree to accept, the court, upon such acceptance, testified by them in writing, will supersede: all debts under 20*l.* shall be computed in value, but such creditors shall not be reckoned in number: minutes of the particulars of these meetings should be made by the solicitor.

No order can be made to supersede for want of prosecution till one day shall elapse after the times above mentioned. And in this case it can be annulled as of course, upon application to Bankrupt Office by any person, unless in cases of fraud; but if bankrupt, after surrender, apply (and indeed in all other cases), a petition must be presented in the usual way. The order to annul should correspond with the fiat in names, description, &c., otherwise it would be fatal; and an advertisement of it must be inserted in the Gazette. This order renders all the proceedings under the fiat of no effect; but if fiat be improperly annulled, the Court of Review, on petition of rehearing, will either order a *procedendo*, or effect the same by another order, which places the fiat and proceedings in the same position as they were; and if ground of application be matter discovered since order to annul made, a supplemental petition, setting forth the same, must also be presented.

A town fiat must be filed in the registrar's office within seven days of its date, and on applying for appointment to open, the registrar will, in the solicitor's presence, allot it to a commissioner by ballot, the name of such commissioner will then be written upon the face, and an arrangement is then made for the sitting to adjudicate; a second or renewed fiat goes to the same commissioner to whom the former was allotted. A creditor thus suing out a fiat abandons all other remedies for the recovery

of his debt, as he by this elects to proceed under the fiat.

Stamp duties on bankruptcy proceedings were repealed by 6 *Geo. IV.*, c. 16, § 98.

Fiat justitia, ruat cælum.—(Let right be done, though the heavens should fall.)

Fiat prout, fieri consuerit, nil temere novandum.

Jenk. Cent. 116 —(Let it be done even as it is accustomed to be done, let nothing be innovated rashly.)

FIAUNT [*fiant*, Lat.], warrant.

Fictio cedit veritati. Fictio juris non est ubi veritas.—(Fiction yields to truth. Where there is truth, fiction of law exists not.)

FICTIO, fictions, in Roman law, are like fictions in English law, of which it has been said that they are "those things that have no real essence in their own body, but are so acknowledged and accepted in law for some especial purpose." The fictions of the Roman law apparently had their origin in the edictal power, and they were devised for the purpose of providing for cases where there was no legislative provision. A fiction supposed something to be which was not, but the thing supposed to be was such a thing as, being admitted to be a fact, gave to some person a right, or imposed on some person a duty. Various instances of fictions are mentioned by Gaius.

It was by a fiction that the notion of legal capacity was extended to artificial persons, that is, to such persons as were merely supposed to exist for legal purposes. Numerous instances of fictions occur in the chapters entitled *Juristische Personen*, in Savigny's *System des heuts*, R. R. vol. ii.

Fictio legis iniquè operatur alicui damnum vel injuriam. 2 Co. 35.—(A feigning of law iniquitously works loss or injury to someone.)

FIDE-JUSSOR, a surety, or one that obliges himself in the same contract with a principal, for the greater security of the creditor or stipulator. *Civil Law Term.*

FIDEI-COMMISSUM, a testamentary disposition, by which a person who gives a thing to another imposes on him the obligation of transferring it to a third person. The obligation was not created by words of legal binding force (*civilia verba*), but by words of request (*precative*), such as "*fidei committo*," "*peto*," "*volo dari*," and the like, which were the operative words (*verba utilia*). If the object of the fidei-commissum was the *hæreditas*, the whole or a part, it was called *fidei commissaria hæreditas*, which is equivalent to a universal fidei-commissum; if it was a single thing, or a sum of money, it was called *fidei-commissum singulæ rei*. The obligation to transfer the former could only be imposed on the heres; the obligation of transferring the latter might be imposed on a legatee.

It appears that there were no legal means of enforcing the due discharge of the trust called fidei-commissum, till the time of Augustus, who gave the consuls jurisdiction in fidei-commissa.

Fidei-commissa seem to have been intro-

duced in order to evade the civil law, and to give the *hæreditas*, or a legacy, to a person who was either incapacitated from taking directly, or who could not take as much as the donor wished to give. Gaius, when observing that peregrini could take fidei-commissa, observes, that "this" (the object of evading the law) "was probably the origin of fidei-commissa;" but by a *senatus-consultum*, made in the time of Hadrian, such fidei-commissa were claimed by the *fiscus*. Fidei-commissa were ultimately assimilated to legacies. *Gaius*, ii. 247-289; *Ulp. Frag.* tit. 25.

Fidelitas. De nullo tenemento, quod tenetur ad terminum, fit homagii; fit tamen inde fidelitatis sacramentum. Co. Lit. 676.—(Fealty. No homage is made for a tenement which is held for a term; yet, indeed, the oath of fealty is made.)

FIDUCIARY, one who holds anything in trust.

FIDEM MENTIRI, when a tenant does not keep that fealty which he has sworn to the lord. *Leg. Hen. I.*, c. 53.

Fides est obligatio conscientie alicujus ad intentionem alterius. Bacon.—(Faith is an obligation of conscience of one to the will of another.)

FIDUCIA. If a man transferred his property to another, on condition that it should be restored to him, this contract was called *fiducia*, and the person to whom the property was so transferred was said *fiduciam accipere*. *Cic. Top.* 10. A man might transfer his property to another for the sake of greater security in time of danger, or for other sufficient reasons. *Gaius*, ii. 60.

FIEF, a fee; a manor, a possession held by some tenant of a superior.

FIEF D' HAUBERT, the Norman phrase for knight-service.

FIERI FACIAS, usually abbreviated *fi. fa.* (that you cause to be made), a judicial writ that lies for him who has recovered any debt or damages in the Queen's courts. It is a command to the sheriff, that of the goods and chattels of the party he cause to be made the sum recovered by the judgment, together with interest, at 4*l. per cent.*, from the time of entering up the judgment, and have the money and interest, and the writ itself, before the Queen, or before her justices, if in the Common Pleas; or her barons, if in the Exchequer, at Westminster, immediately after the execution of the writ, to be rendered to the party who sued it out. If the sheriff return *nulla bona*, an *alias fi. fa.* may issue; and upon that being returned, a *pluries*, or a *testatum fi. fa.* may be issued into another county.

By 8 *Anne*, c. 14, § 1, "no goods or chattels whatsoever, lying or being in or upon any messuage, lands, or tenements, which are or shall be leased for life or lives, term of years, at will, or otherwise, shall be liable to be taken by virtue of any execution on any pretence whatsoever, unless the party at whose suit the said execution is sued out, shall, before the removal of such

goods from off the premises, by virtue of such execution or extent, pay to the landlord of the said premises, or his bailiff, all such sum or sums of money as are or shall be due for rent for the said premises at the time of the taking such goods or chattels by virtue of such execution, provided the said arrears of rent do not amount to more than one year's rent; and in case the said arrears shall exceed one year's rent, then the said party, at whose suit such execution is sued out, paying the said landlord, or his bailiff, one year's rent, may proceed to execute his judgment, as he might have done before the making of this act; and the sheriff or other officer is hereby empowered and required to levy and pay to the plaintiff as well the money so paid for rent as the execution-money."

Under this execution can be taken all personal goods and chattels, excepting wearing apparel actually in use. Also any money or bank notes (whether of the Governor and Company of the Bank of England, or of any other bank or bankers), and any cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money belonging to the person against whose effects a *fi. fa.* shall be sued out. 1 & 2 Vict., c. 110, § 12. The sheriff cannot sell an estate in fee or for life, unless, perhaps, an estate *par autre vie*; but he may sell leases and terms for years. Neither can fixtures be seized, but emblements may. The seizure and sale of straw, chaff, turnips, manure, hay, grapes, roots, vegetables, &c., on lands let to farm, are regulated by 56 Geo. III., c. 50. If the sheriff seize the goods of a stranger, he will be liable to an action. The goods of a woman cohabiting with a defendant cannot be taken in execution, although she passes for his wife. If the sheriff return that he has taken goods, but that they remain in his hands for want of buyers, a *renditioni exponas* is issued to compel a sale; but if the sheriff have gone out of office after such return, instead of a *renditioni exponas*, a *distringas nuper vicecomitem*, addressed to the present sheriff, issues, commanding him to distrain the late sheriff to sell the goods, or forfeit issues to the amount of the debt. An *elegit* or a *ca. sa.* may issue after a *fi. fa.*, if the judgment be not satisfied. *Chit. Arch. Prac.* 419.

A *fi. fa.* may be issued in Chancery suits, for the purpose of obtaining satisfaction of any pecuniary demand, to which a person may be entitled under a decree or order of the court. 1 & 2 Vict., c. 110; and *Orders*, 10th May, 1839.

FIERI FACIAS DE BONIS ECCLESIASTICIS (that you cause to be made of the ecclesiastic's goods), when a sheriff to a common *fi. fa.* returns *nulla bona*, and that the defendant is a beneficed clerk, not having any lay fee, a plaintiff may issue a *fi. fa. de bonis ecclesiasticis*, addressed to the bishop of the diocese, or to the archbishop (during the vacancy of the bishop's see), commanding him to make of the ecclesiastical

goods and chattels belonging to the defendant within his diocese, the sum therein mentioned. *Chit. Arch. Prac.* 915.

FIERI FECI (I have caused to be made), a return made by a sheriff when he has executed a writ of execution.

FIFTEENTHS, a tribute or imposition of money, anciently laid generally upon cities, boroughs, &c., through the whole realm; so called, because it amounted to a fifteenth part of that which each city or town was valued at, or a fifteenth of every man's personal estate, according to a reasonable valuation. *Cam. Brit.* 171.

FIGHTWITE, making a quarrel to the disturbance of the peace.

FIGURES, the numeral characters by which numbers are expressed or written, as the ten digits, which are usually called the Arabic or Indian figures, from which people, it has been supposed, they were derived. The 6 Geo. II., c. 14, allows the expressing numbers by figures in all writs, &c., pleadings, rules, orders, and indictments, &c., in courts of justice, as have been commonly used in the said courts, notwithstanding anything in 4 Geo. II., c. 26.

FILACER, FILAZER, or FILIZER [*filum*, Lat., *file*, *filace*, Fr., a thread], an officer of the superior courts at Westminster, who files original writs, &c., and issues processes thereon. 2 Wm. IV., c. 39, § 4; 2 & 3 Wm. IV., c. 110, § 2.

FILE [*filacium*], a thread, string, or wire, upon which writs and other exhibits in courts and offices are fastened or filed, for the more safe keeping of, and ready turning to, the same.

FIELD-ALE, or FILKDALE, a kind of drinking in the field by bailiffs of hundreds; for which they gathered money of the inhabitants of the hundred to which they belonged. Now prohibited. 4 Inst. 307.

Filiatio non potest probari. Co. Lit. 126.—(Filiation cannot be proved.)

FILIATION [*filius*, Lat.], the relation of a son to his father; correlative to paternity.

FILICETUM, a fenny ground. Co. Lit. 4.

Filius in utero matris est pars viscerum matris. 7 Co. 8.—(A son in the mother's womb is part of the mother's bowels.)

FILIUS MULIERATUS, the eldest legitimate son of a woman who was illicitly connected with his father before marriage.

FILIUS POPULI, a son of the people; a bastard.

FILIOTUS, a little son; a god-son.

FILUM AQUÆ, the thread or middle of the stream where a river parts two lordships; also the middle of any river or stream which divides counties, townships, parishes, manors, liberties, &c.

FINAL DECREE, a conclusive sentence of the court, as distinguished from interlocutory.

FINAL JUDGMENT. See JUDGMENT.

FINANCES, the revenue of a sovereign or state, or the money raised by loans, taxes, &c., for the public service.

FINANCIER, a person employed in the economical management and application of the public money.

FINDER, a searcher employed to discover goods imported or exported, without paying custom.

FINDER OF GOODS acquires a special property in them, available against all the world, except the true owner; he is bound, however, before appropriating them to his own use, to take all the means in his power to discover the owner. If the property had not been designedly abandoned, and the finder knew who the owner was, or with due exertion could have discovered him, he is held guilty of larceny if he keep and appropriate the articles to his own use. *Merry v. Green*, 7 M. & W. 623; *Armourie v. Delamirie*, 1 Str. 505.

FINE [*finis*, or *finalis concordia*, from the words with which it begins], in its origin, a real action brought to enforce the performance of a covenant concerning the land, which terminated in a compromise, the conusor or defendant acknowledging and *finally* confirming the right and title of the conusee or plaintiff. It became at length to be a mode of assurance acknowledged in a court of record, either in term or vacation, and proclaimed, *i. e.*, read openly in the Court of Common Pleas once in four successive terms. The effect of a fine levied with proclamations, according to the statute law, by a tenant in tail, was that it barred the issue inheritable under the entail, and enabled the tenant in tail to acquire and convey a base fee determinable on the failure of the issue in tail. It was no bar to the remainder or reversion, unless it was in the tenant in tail; or the remainder-man or reversioner concurred, in which case he would have acquired, instead of a base fee, the fee simple absolute. A fine might have been levied without proclamations (and was called a fine at common law), but in consequence of its imperfect operation, it was never resorted to in modern times.

Another useful effect of this assurance was passing the estates, and extinguishing the rights and powers of married women, which might also have been effected by a recovery. All parties to a fine, together with their privies in estate were estopped, *i. e.*, forbidden by law to speak or act against their own deed.

In consequence of the inadequacy of a fine, effectually to unbind the trammels in which the Statute *de Donis* had enveloped entailed estates, and to pass a fee-simple, recourse was had to a recovery, the suffering of which enabled the tenant in tail to bar not only his estate tail, but also all remainders, reversions, conditions, collateral limitations and charges (if they were not in the Crown), not prior to the estate tail, and to acquire or convey a fee-simple, or an estate commensurate with that of the settlor.

Before the 3 & 4 Wm. IV., c. 74, abolishing fines, there were three sorts in general use;

1st, *sur consueance de droit come ceo*, &c.: 2ndly, *sur consueance de droit tantum*; 3rdly, *sur concessit*: the *sur don, grant, et render* was considered obsolete. The first was most usually adopted; and, indeed, from its peculiar force and efficacy, was preferable in all cases where a forfeiture was not apprehended, or would not be incurred by levying it. *Wat. Conv. chap. xv.* See **TAIL**.

FINE ADULLANDO LEVATO DE TENEMENTO QUOD FUIT DE ANTIQUO DOMINICO, an abolished writ for disannulling a fine levied of lands in ancient demesne to the prejudice of the lord. *Reg. Orig.* 15.

FINE CAPIENDO PRO TERRIS, &c., an obsolete writ which lay where a person, upon conviction of any offence by jury, has his lands and goods taken, and his body imprisoned, to be remitted his imprisonment, and have his lands and goods redelivered to him, on obtaining favour of a sum of money, &c. *Reg. Orig.* 142.

FINE FORCE, where a person is compelled to do that which he can in nowise help. *O. N. B.* 63.

FINE NON CAPIENDO PRO PULCHRE PLACITANDO, an obsolete writ to inhibit officers of courts to take fines for fair pleading.

FINE PRO REDISSEISINA CAPIENDA, an old writ that lay for the release of one imprisoned for a redisseisin, on payment of a reasonable fine. *Reg. Orig.* 222.

FINES FOR ALIENATION, one of the oppressions of the feudal system, abolished by 12 Car. II., c. 24.

FINES IN COPYHOLDS, payments due by the custom of most manors to the lord upon every descent or alienation of a copyhold tenant. They must be reasonable in their extent, and, unless under particular circumstances, they must not exceed two years' improved value of the estate. 2 *Bl. Com.* 98.

FINES FOR ENDOWMENT, anciently paid to the lord when a married woman was endowed: it was grounded on the feudal exactions.

FINES FOR OFFENCES, amends, pecuniary punishment, or recompense for offences committed against the Sovereign and the laws, or the lord of a manor, &c. 4 *Bl. Com.* 378.

Fines mandatorum domini regis per rescripta sua [scil. *brevin*] *diligenter sunt observandi.* 5 Co. 87.—(The limits of the king's mandates in his rescripts [*i. e.*, writs] are to be diligently observed.)

FINIRE, to fine, or pay a fine upon composition and making satisfaction. *Old Records.*

Finis rei attendendus est. 3 *Inst.* 51.—(The end of a thing is to be attended to.)

Finis finem litibus imponit. 3 Co. 78.—(The end puts an end to litigations.)

Finis unius diei est principium alterius. 2 *Buls.* 305.—(The end of one day is the beginning of another.)

Finis. Talis concordia finalis dicitur, eo quod

Acem imponit negotio, adeo quod neutra pars litigantium ab eo de cætero potest recedere. Co. Lit. 121.—(An end. Such is a final concord, that which puts an end to the business, so that neither side of the litigation can recede from one thing to another.)

FINITIO, death.

FIRDFARE, and FIRDWITE. See FIRDWIT.

FIRDERINGA, a preparation to go into the army.

FIRE-ARMS, under this designation is comprised all sorts of guns, fowling-pieces, blunderbusses, pistols, &c. The manufacture of these weapons is of considerable importance; employing at all times, but especially during war, a large number of persons.

In consequence of the frequent occurrence of accidents from the bursting of insufficient barrels, the legislature has most properly interfered, not to regulate their manufacture, but to prevent all persons from using or selling barrels that have not been regularly proved in a public proof-house. The first act for this purpose was passed in 1813, but it was soon after superseded by a fuller and more complete one: the 55 Geo. III., c. 59. This statute imposes a fine of 20*l.* on any person using, in any of the progressive stages of its manufacture, any barrel not duly proved, on any person delivering the same except through a proof-house; and on any person receiving, for the purpose of making guns, &c., any barrels which have not passed through a proof-house. These penalties to be levied on conviction before two justices: with like penalties, to be similarly levied on persons counterfeiting the proof-marks. *McCulloch's Comm. Dict.*

FIREBARE, a beacon or high tower by the sea side, wherein are continual lights, either to direct sailors in the night, or to give warning of the approach of an enemy.

FIREBOTE, fuel for necessary use, allowed to tenants out of the lands granted to them.

FIRE-ORDEAL, the trial by red-hot iron, used upon accusations without manifest proof (though not without suspicion that the accused might be faulty), and the party accused and denying the delict was adjudged to take red-hot iron, and to hold it in his bare hand, which, after many prayers and invocations that the truth might be manifested, he must adventure to do, or yield himself guilty, and so receive the punishment that the law, according to the offence committed, shall award him.

Some were adjudged to go blindfolded, with their bare feet over certain plough shares, which were made red-hot and laid a little distance one before another, and if the party either in passing through them did chance not to tread upon them, or treading upon them, received no harm, then by the Judge he was declared innocent. And this kind of trial was practised in England upon Emma, the mother of King Edward the Confessor, who was accused of dishonesty of her body with Algyne, bishop of Winchester;

and being led blindfolded unto the place where the glowing hot irons were laid, went forward with her bare feet, and so passed over them, and being gone past them all, and not knowing whether she were past them or not, said, "O! good Lord! when shall I come to the place of my purgation?" And having her eyes uncovered, and seeing herself to have past them, she kneeled down and gave thanks to God, for manifesting her innocence by her preservation from being hurt. A much like trial unto this is recorded of Kunigund, wife unto the emperor Henry the Second, who being falsely accused of adultery, to shew her innocence, did, in a great and honourable assembly, take seven glowing irons one after another in her bare hands, and had thereby no harm. *Verstegan's Rest. Dec. Intel.* 65.

FIRE POLICY, a transaction effected at an insurance office, whereby, in consideration of a single or periodical payment of premium, the company engages to pay to an assured person such loss as may occur by fire to his property described in the policy, within the period therein specified, to an amount not exceeding a particular sum fixed for that purpose by such policy. 2 *Step. Com.* 180.

FIRE and SWORD, *letters of*, anciently issued from the privy council in Scotland, addressed to the sheriff of the county, authorising him to call for the assistance of the county to dispossess a tenant retaining possession, contrary to the order of a Judge, or the sentence of a court.

FIRM, the name or names under which any house of trade is established.

FIRMA, the fee or acknowledgment which a tenant pays to his lord in Scotland; also a tribute anciently paid towards the entertainment of the king of England for one night; also victuals, provisions, or rent.

FIRMA ALBA. See ALBA FIRMA.

FIRMAN, a passport or permit granted by the Great Mogul to foreign vessels, to trade within the territories of his jurisdiction.

FIRMARY, the right of a tenant to his lands and tenements.

FIRMATIO, the doe season; a supplying with food. *Leg. Inæ.*, c. 34.

FIRME, a farm. *Old Records.*

Firmior et potentior est operatio legis quam dispositio hominis. Co. Lit. 102.—(The operation of the law is firmer and more powerful than the will of man.)

FIRMURA, liberty to scour and repair the mill-dam, and carry away the soil, &c. *Blount.*

FIRST FRUITS, an incident to the old feudal tenures, being one year's profits of the land, after the death of a tenant, which belonged to the king; hence the claim of the church to the first year's profits of every clergyman's benefit; otherwise called *annates* or *primitiæ*. They form a perpetual fund, called Queen Anne's bounty, for the augmentation of poor livings. 2 & 3 *Anne*, c. 8.

FISC [*φισκος*, Gk., *fiscus*, Lat., a great basket], the treasury of a prince or state.

The word *fiscus* signified a wicker-basket or pannier in which the Romans were accustomed to keep and carry about large sums of money (*Cic.* 1, *Verr.* c. 8; *Phædr.* *Fab.* ii. 7), and hence *fiscus* came to signify any person's treasure or money chest.

The importance of the imperial *fiscus* soon led to the practice of appropriating the name to that property, which the Cæsar claimed as Cæsar, and the word *fiscus*, without any adjunct, was used in this sense (*Juv. Sat.* iv. 54). Ultimately the word came to signify, generally, the property of the state, the Cæsar having concentrated in himself all the sovereign power, and thus the word *fiscus* finally had the same signification as *aerarium*, in the republican period. It does not appear at what time the *aerarium* was merged in the *fiscus*, though the distinction of name and of thing continued at least to the time of Adrian. In the later periods, the words *aerarium* and *fiscus* were often used indiscriminately, but only in the sense of the imperial chest, for there was then no other public chest. *Smith's Dict. Antiq.*

FISCAL, the exchequer; revenue.

FLSK, the right of the Crown to the moveable estate of a person pronounced rebel. *Scotch Law.*

FITUNG, strife.

FITZ [Nor., from *filu*, Fr.], a son. It is used in law and genealogy; as *Fitzherbert*, the son of Herbert; *Fitzjames*, the son of James; *Fitzroy*, the son of the king. It was originally applied to illegitimate children.

FIXTURES, things of an accessory character annexed to houses or lands, which become, immediately on annexation, part of the realty itself, *i. e.*, governed by the same law which applies to the land, in conformity to the maxim *quicquid plantatur solo, solo cedit* (whatever is fixed to the soil, submits to the soil).

Legal principle, however, is not uniform upon this subject. The connections in which it differs may be thus shown:—

1. Between landlord and tenant. If the chattels be not let into the soil, they are not fixtures at all, and may be removed at will, like any other species of personal property. When the chattel is perfectly connected with the freehold, either by being let into the earth itself, or by being cemented, or otherwise united to some erection previously attached to the ground, the question then arises, in what cases the tenant may remove such fixtures, and in what not.

The general rule as to annexations made by a tenant during the continuance of his term, is the following:—whenever he has affixed anything to the demised premises during the term, he can never again sever it without his landlord's consent; the property, by being annexed to the land, immediately belongs to the freeholder; and a tenant, by making it a part of the freehold, is considered to have abandoned all future right to it, so that it would be waste in him

to remove it afterwards: it therefore falls in with his term, and comes to the reversioner as part of the land. But a tenant may so construct the erections, that they shall not be deemed fixtures: thus if he erect even buildings,—as barns, granaries, sheds, and mills,—upon blocks, rollers, pattens, pillars, or plates, resting on brickwork, they may be removed; for unless they be affixed to the freehold, by being let into it, or are, by means of rails, mortar, or the like, united to it, they remain merely moveable chattels.

The exceptions to the above rule are three:—(a) In favour of trade. A tenant may safely remove such things which he has fixed to the freehold for purposes of trade or manufacture, provided the removal cause no material injury to the estate. This exception has been expressly decided to extend to furnaces, coppers, brewing vessels, fixed vats, salt pans, and the like; to machinery in breweries, collieries, and mills, such as steam engines, cider mills, and the like; to buildings for trade, as a varnish house, built on plates laid on brickwork, and a shed, called a Dutch barn, formed of uprights rising from a foundation of brick: (B) For agricultural purposes. Although an agricultural tenant cannot remove articles which are strictly of an agricultural nature, yet, if the object and purpose of erections have relation to trade of any description, the tenant may remove them; as cider mill, machinery for working mines, collieries, and salt pans: nurserymen have been allowed to remove trees and shrubs planted for purposes of sale, but not to plough up strawberry beds out of the ordinary management of a nursery-ground, nor to remove hot-houses, green-houses, forcing-pits, &c.; and in no case can private persons sell or remove fruit trees, though planted by themselves. (γ) For ornament and convenience. The following have been held removeable:—hangings, tapestry, and pier glasses, whether nailed to the walls or panels, or put up in lieu of panels; marble or other ornamental chimney-pieces; marble slabs; window blinds; wainscot fixed to the walls by screws; grates, ranges, and stoves, although fixed in brickwork; iron backs to chimnies; beds fastened to the walls or ceiling; fixed tables, furnaces and coppers, mash-tubs, and fixed water tubs; coffee and malt mills; cupboards fixed with boltdasts; clock-cases, iron ovens, and the like; provided the separation occasion but little or no damage. The fixtures must be moved before the tenant's term or interest expires, unless perhaps in the case of a strict tenancy at will, when the tenant may be allowed a reasonable time after the determination of his tenancy, if his interest were not terminated by his own act. *Woodf. Land. and Ten.* 411.

(2) Between the heir and the personal representative of the terre-tenant. Though the fixtures will generally pass with the freehold

to the heir, yet such of them as are put up for ornament, domestic use, or trade, devolve to the personal representative, provided they can be easily removed, and not essential to the enjoyment of the inheritance.

(3) Between the tenant of a particular estate and the remainder-man or reversioner, a similar rule applies as in the last case, though the right is more favourably construed. *Amos and Ferard on "Fixtures."*

FLACO, a place covered with standing water.

FLAGRANTE DELICTO (in the very act of committing the crime).

FLECTA, a feathered or fleet arrow.

FLEDWITE, or FLIGHTWITE [*flyth*, Sax., flight, and *wite*, punishment], a discharge from amerciaments, where a person having been a fugitive came to the peace of our Lord the King, of his own accord, or with license.

FLEET [*flcot*, Sax., an estuary], a company of ships or navy; also a prison in London, so called from a river or ditch formerly in its vicinity, now abolished by 5 & 6 Vict., c. 22.

FLEET BOOKS. The books of the old Fleet prison are not, it is said, admissible in evidence to prove a marriage, for they are not made under public authority. But perhaps on a question of pedigree, they are evidence to show the name by which a woman passed when she was married there. These books are said to have been purchased by the Government, and to be deposited in the Consistory Court of London. They contain the original entries of marriages solemnized in the Fleet prison, from 1636 to 1754. 1 *Stark. Evid.* 244.

FLEM [*flcan*, Sax., to kill], an outlaw.

FLEMENE FRIT, FLEMENES FRINTHE, FLYMENA FRYNTHE, the reception or relief of a fugitive or outlaw.

FLEMESWITE, the possession of the goods of fugitives. *Fleta*, lib. i, c. 47.

FLET, house; home.

FLETA, the name given to an unknown writer, who lived about the end of the reign of Edward II., and beginning of Edward III., and who being a prisoner in the Fleet, wrote there an excellent treatise on the common law of England; and hence the term *Fleta* was given to the work.

FLETWIT, or FLITWIT. See FLEDWITE.

FLIT, treason.

FLITCHWITE, a fine on account of brawls and quarrels.

FLOTAGES, such things as by accident swim on the top of great rivers.

FLOTSAM, goods floating upon the sea, which belong to the Crown, unless claimed by the true owners thereof within a year and a day.

Flumina et portus publica sunt, ideoque jus piscandi omnibus commune est.—(Rivers and ports are public, therefore the right of fishing is common to all.)

FLYMA, a runaway; fugitive; one escaped from justice, or who has no "hlaford." *Anc. Inst. Eng.*

FLYMAN-FRYMTH, the offence of harbour-

ing a fugitive, the penalty attached to which was one of the rights of the Crown. *Anc. Inst. Eng.*

FOCAGE, housebote, or firebote.

FOCALE, a right to take firewood.

FODDER, any kind of meat for horses or other cattle; also, among the Feudists, a prerogative of the prince to be provided with corn and other meat for his horses by his subjects, in his wars or other expeditions.

FODERTORIUM, provision to be paid by custom to the royal purveyors.

Felix qui potuit rerum cognoscere causas. Co. Lit. 231.—(Happy is he who can apprehend the causes of things.)

Feminae non sunt capaces de publicis officiis. Jenk. Cent. 237.—(Women are not qualified for public offices.)

But a woman may be elected to the office of sexton, *Olive v. Ingram*, 7 Mod. 263; Str. 1114, S. C. Or governor of a workhouse, and act by deputy, *Anon.*, 2 Lord Raym. 1014. Or an overseer, *Rea v. Stubbs*, 2 T. R. 395.

FOENERATION, the act of putting out money to usury.

FOENUS NAUTICUM (nautical usury), a contract for the repayment of money borrowed, not on the ship and goods only, but on the mere hazard of the voyage itself, with a condition to be repaid with extraordinary interest. 2 *Step. Com.* 144.

FOESA, grass; herbage.

FOCAGE, fog, or rank after-grass, not eaten in summer.

FOITERERS, vagabonds.

FOLC-LAND, the land of the folk or people.

It was the property of the community. It might be occupied in common, or possessed in severalty; and, in the latter case, it was probably parcelled out to individuals in the *folc-gemot* or court of the district; and the grant sanctioned by the freemen who were there present. But, while it continued to be folcland, it could not be alienated in perpetuity; and therefore, on the expiration of the term for which it had been granted, it reverted to the community, and was again distributed by the same authority. Spelman describes folcland as *terra popularis, quæ jure communi possidetur—sine scripto* (Gloss. Folcland). In another place he distinguishes it accurately from bocland: *Prædia Saxones duplici titulo possidebant: vel scripti auctoritate, quod bocland vocabant, vel populi testimonio, quod folcland dixerent* (Ib. Bocland).

Folcland was subject to many burthens and exactions from which bocland was exempt. The possessors of folcland were bound to assist in the reparation of royal vills, and in other public works. They were liable to have travellers and others quartered on them for subsistence. They were required to give hospitality to kings and great men in their progresses through the country, to furnish them with carriages and relays of horses, and to extend the same assistance to their messengers, followers, and servants.

and even to the persons who had charge of their hawks, horses, and hounds. Such at least are the burthens, from which lands are liberated, when converted by charter into bocland.

Folcland might be held by freemen of all ranks and conditions. It is a mistake to imagine with Lambarde, Spelman, and a host of antiquaries, that it was possessed by the common people only. Still less is Blackstone to be credited, when, trusting to Somner, he tells us it was land held in villenage by people in a state of downright servitude, belonging, both they and their children and effects, to the lord of the soil, like the rest of the cattle or stock upon the land (2 *Bl. Com.* 92). A deed published by Lye exposes the error of these representations (*Anglo-Saxon Dict. app.* ii. 2). Alfred, a nobleman of the highest rank, possessed of great estates in bocland, beseeches King Alfred in his will to continue his folcland to his son Æthelwald; and if that favour cannot be obtained, he bequeaths in lieu of it to his son, who appears to have been illegitimate, ten hides of bocland at one place, or seven at another. From this document it follows, first, that folcland was held by persons of rank; secondly, that an estate of folcland was of such value that seven or even ten hides of bocland were not considered as more than equivalent for it; and lastly, that it was a life estate, not devisable by will, but, in the opinion of the testator, at the disposal of the king, when by his own death it was vacated.

It appears also from this document, that the same person might hold estates both in bocland and in folcland; that is to say, he might possess an estate of inheritance, of which he had the complete disposal, unless in so far as it was limited by settlement; and with it he might possess an estate for life, revertible to the public after his decease. In the latter times of the Anglo-Saxon government, it is probable there were few persons of condition who had not estates of both descriptions. Every one was desirous to have grants of folcland, and to convert as much of it as possible into bocland. Money was given, and favour exhausted for that purpose. In many Saxon wills we find petitions similar to that of Alfred; but in none of them is the character of the land, which could not be disposed of without consent of the king, described with the same precision. In some wills, the testator bequeaths his land as he pleases, without asking leave of any one (*Somner's Gavelkind*, 83, 211; *Hickes, Pref.* xxxii.; *Diss. Epist.* 29, 54, 55, 59; *Madox Formul.* 395); in others, he earnestly beseeches the king that his will may stand, and then declares his intentions with respect to the distribution of his property (*Lambarde, Kent*, 540; *Hickes, Diss. Epist.* 54; *Gale*, i. 457; *Lye's Appendix* ii. 1, 5; *Heming*, 40); and, in one instance, he makes an absolute bequest of the greater part of his lands, but solicits the

king's consent to the disposal of a small part of his estate (*Hickes, Diss. Epist.* 62). There can be no doubt that bocland was devisable by will, unless where its descent had been determined by settlement; and a presumption therefore arises, that where the consent of the king was necessary, the land devised was not bocland, but folcland. If this inference be admitted, the case of Alfred will not be a solitary instance, but common to many of the principal Saxon nobility.

That folcland was assignable to the thegns, or military servants of the state, as the stipend or reward for their services, is clearly indicated in the celebrated letter of Bede to Archbishop Egbert (*Smith's Bede*, 305, 312). In that performance, which throws so much light on the internal state of Northumberland, the venerable author complains of the improvident grants to monasteries, which had impoverished the government, and left no lands for the soldiers and retainers of the secular authorities, on whom the defence of the country must necessarily depend. He laments this mistaken prodigality, and expresses his fears that there will be soon a deficiency of military men to repel invasion; no place being left where they can obtain possessions to maintain them suitably to their condition. It is evident from these complaints, that the lands so lavishly bestowed on the church had been formerly the property of the public, and at the disposal of the government. If they had been boclands, it could have made no difference to the state, whether they belonged to the church or to individuals, since in both cases they were beyond its control, and in both cases were subject to the usual obligations of military service. But, if they formed part of the folcland, or property of the public, it is easy to conceive how their conversion into bocland must have weakened the state, by lessening the fund out of which its military servants were to be provided.

A charter of the eighth century conveys to the see of Rochester certain lands on the Medway, as they had been formerly possessed by the chiefs and companions of the Kentish Kings. (*Textus Roffens.* 72, *Ed. Henric; Kemble Cod. Diplom.*, No. cxi.) In this instance folcland, which had been appropriated to the military service of the state, appears to have been converted into bocland, and given to the church. *Allen's Inquiry into the Rise and Progress of the Royal Prerogative in England*, 143—149.

FOLC-MOTE, or FOLK-MOTE [*folc*, Sax., people, and *mote*, meeting], a general assembly of the people to consider of and order matters concerning the commonwealth; also any kind of popular or public meeting. *Somner, Spelm.*, *Brady's Gloss.* 48; *Terms de Ley*.

FOLC-RIGHT, or FOLC-RIGHT, the *jus commune*, or common law, mentioned in the laws of King Edward the Elder, expressing the same equal right, law, or justice, due to persons of all degrees.

FOLDAGE, and FOLDCOURSE. See **FALDAGE**.

FOLGARII, menial servants.

FOLGERE, a freeman, who has no house or dwelling of his own, but is the follower or retainer of another (*heorthfæst*), for whom he performs certain predial services. *Anc. Inst. Eng.*

FOLGOTH, official dignity.

FOLIO, a certain number of words; in conveyances, &c., amounting to seventy-two, and in Chancery proceedings to ninety; also the figure set at the top of a page.

FOOT OF A FINE, the conclusion of it, including the whole matter, and reciting the parties, day, year, and place, and before whom it was acknowledged or levied.

FOOT-GELD, an amercement for not cutting out or expediting the ball of dogs' feet in the forest. *Manw. p. i., p. 86.*

FORAGE, hay and straw for horses, particularly in the army.

FORAGIUM, straw when the corn is thrashed out.

FORBALKA, a balk or ridge of land lying forward or next to the highway. *Old Records.*

FORBARRE, to deprive one of a thing forever.

FORBATUDUS, the aggressor slain in combat.

FORCE, any unlawful violence offered to things or persons: it is either *simple*, as entering into another's possession, without doing any other unlawful act; *compound*, when some other violence is committed, which of itself alone is criminal; or *implied*, as in every trespass, rescous, or disseisin.

All force is contrary to law, it is, therefore, lawful to repel force by force: *quod alias bonum et justum est, si per vim vel fraudem petatur, malum et injustum est.*—

(That which is otherwise good and just, if it be obtained by force or fraud, is bad and unjust.) 3 Rep. 78.

FORCE AND ARMS [*vi et armis*], words usually inserted in an indictment, though not absolutely necessary. 7 Geo. IV., c. 64, § 20.

FORCES, the military and naval services of the country.

FORCIBLE DETAINER, refusing to restore another's goods, after sufficient amends tendered, the original taking having been lawful; for which injury, the remedy most usually resorted to is trover. But if the original taking were unlawful, it is a criminal offence against the public peace, and a misdemeanour punishable by imprisonment and ransom at the pleasure of the Crown. 4 Step. Com. 280.

FORCIBLE ENTRY, a taking possession with a strong hand and with violence, which is both a civil and a criminal injury. The civil injury is remedied by immediate restitution of the ejected possessor, the criminal injury, being a breach of the peace, is punished by fine. 3 Step. Com. 360.

FORD, a shallow place in a river.

FORDOL [*fore*, Sax., before, and *dæle*, a

portion,], a butt or headland, shooting upon other bounds.

FORE-HAND RENTS, or FINES, a species of rent, the payment of which is generally stipulated for by a covenant in the lease. It is sometimes called a fore-gift or income, but more commonly a fine. It is a premium given by a lessee at the time of taking his lease, and has been considered as an improved rent. *Wood. Land. and Tent.* 277.

FORECHEAPUM, præ-emption, forestalling the market.

FORE-CITED, quoted before or above.

FORECLOSURE, *bill of*, an original bill filed in the Court of Chancery by a mortgagee, where the mortgage-deed contains no power of sale, in order to obtain the court's direction, in the payment of principal money, interest, and expences, or, in default, that the mortgagor may be shut out from the equity of redemption.

By the 4th Order of 9th May, 1839, it is ordered, "That foreclosure causes when ready for hearing, may be ordered to be advanced for hearing under the same circumstances, and subject to the same rules as other causes, may be ordered to be so advanced."

FOREGOERS, royal purveyors.

FOREIGN ATTACHMENT, a defendant who has been arrested in a foreign country, may be again arrested in this country for the same cause of action. And where a defendant who had been arrested in a foreign country on a judgment obtained there, escaped and came to this country, the Court of Queen's Bench decided that he may be holden to bail here in an action on the judgment. But, after an arrest in Ireland or Scotland, the defendant cannot, in general, be again arrested here for the same debt, neither of them being deemed a foreign country for such a purpose. *Chit. Arch. Prac.* 478.

FOREIGN BILL OF EXCHANGE, one drawn by a person residing abroad, or in Scotland or Ireland, upon his correspondent in England, or *vice versa*. A bill drawn abroad and accepted in England does not require a stamp, but a bill drawn in this country upon a foreign house requires a stamp. 2 Step. Com. 163.

FOREIGN BOUGHT and SOLD, a custom in London, which, being found prejudicial to sellers of cattle in Smithfield, was abolished.

FOREIGN COURTS, their proceedings are proved by copies under the seal of such courts, proving by parol evidence that the seal affixed is the seal of such courts. If a court have no seal, then proof by an exemplification under the hand of the Chief Justice of the court (his handwriting being proved), will be received. The law of a foreign country, if written, can be proved here only by the production of some authenticated copy; if unwritten, then by the parol evidence of a witness of competent skill. *Chit. Arch. Prac.* 221.

FOREIGN ENLISTMENT ACT, the 59 Geo. III., c. 69, which enacts that, if any

natural born subject of Great Britain (without licence obtained under the royal sign manual, or by order in council, or by proclamation), shall accept any military commission, or enlist as a soldier or a sailor in any foreign service, or shall go to any foreign country with an intent so to enlist, or shall endeavour to procure any other person so to enlist; and if any person within the realm shall fit out any armed vessel for the service of any foreign state, or shall issue any commission for any such vessel, or shall alter the number of guns of such vessel, or be concerned in augmenting the force of any foreign armed vessel arriving in this country; such offenders shall be guilty of a misdemeanour, and may be punished with fine or imprisonment, or both. And a ship having on board such persons may be prevented from proceeding on her voyage; and the master thereof, if he know the circumstance, may be fined 50*l.* for every such person respectively.

FOREIGN PLEA, a plea objecting to the jurisdiction of a Judge, he not having cognizance of the matter of the suit.

FOREIGN FUNDS. See **FUNDS**.

FOREIGNERS, aliens. They are amenable to our laws whilst residing among us, and it is no defence for a foreigner charged with a crime committed in England, that he did not know he was doing wrong, the act not being criminal in his own country. *R. v. Esop*, 7 C. & P. 456.

FOREJUDGER [*forisjudicatio*], a judgment whereby a person is deprived of, or put by, the thing in question. To be forejudged the court, is when an officer or attorney of any court is expelled the same for some offence, or for not appearing to an action.

FORENSIC MEDICINE, the science which applies the principles and practice of the different branches of medicine to the elucidation of doubtful questions in a court of justice. It comprehends, in a more extensive sense, *medical police*, or those medical precepts which may prove useful to the legislature or the magistracy. This science is also termed *medical jurisprudence*, *legal medicine*, and *state medicine*.

FORESCHOKE [*derelictum*], forsaken; disavowed.

FOREST [*foresta*, Ital.], an incorporeal hereditament, being the right or franchise of keeping, for the purpose of venary and hunting, the wild beasts and fowls of forest, chase, park, and warren (which means in effect all animals pursued in field sports), in a certain territory or precinct of woody ground and pasture set apart for the purpose, with laws and officers of its own, established for protection of the game. *Manio. For. Laws*. The *Charter de Foresta*, confirmed in Parliament, 9 Hen. III., disafforested many forests unlawfully made. Some of the royal forests still exist, as New Forest in Hampshire, Windsor, and Richmond.

A forest is, in general, a royal possession, though it is capable of being vested in a

subject. A forest is a right which the owner thereof (whether sovereign or subject) may have either in his own lands or the lands of another, differing from other incorporeal hereditaments, which are rights exercised over another's lands. The owner of a forest is also considered (notwithstanding the general rule, that title cannot be made to things *feræ naturæ*) as having a qualified property in the wild animals of chase, and venary there found, as long as they continue therein. 2 *Step. Com.* 17.

FOREST COURTS, fallen into absolute disuse. They were instituted for the government of the royal forests in different parts of the kingdom, and for the punishment of all injuries done to the deer or venison, to the vert or greensward, and to the covert in which such deer were lodged. They consisted of the courts of attachments, regard, *sweinmote*, and justice seat. The court of *attachments*, *woodmote*, or forty days' court, was held before the verderors of the forest once in every forty days, to enquire into all offences against vert and venison. The court of *regard*, or survey of dogs, held every third year, for the expeditation of mastiffs. The court of *sweinmote*, held before the verderors thrice in every year, the sweins or freeholders within the forest composing the jury. It inquired into the oppressions and grievances committed by the officers of the forest, and tried presentments certified from the court of attachments against offences in vert and venison. The court of *justice-seat*, held before the chief justice in eyre, or chief itinerant Judge, or his deputy, to hear and determine all trespasses within the forest, and all claims of franchise, liberties, and privileges, and all pleas and causes whatsoever therein arising. This was a court of record; but since the Revolution in 1688, the forest laws have fallen into total disuse. 3 *Step. Com.* 439.

FORESTAGE, the duty paid to the sovereign by a forester. *Encyc. Lond.*

FORESTALLING THE MARKET, buying up merchandize on its way to market, or dissuading persons to bring their goods there, or persuading them to enhance the price when there. It was an offence against public trade, but abolished by 7 & 8 *Vict*, c. 24.

FORETHOUGHT FELONY, murder.

FORFANG, or **FORFENG** [*fore*, Sax., before, and *fangen*, to buy], the taking of provisions from any person in fairs or markets before the royal purveyors were served with necessaries for the sovereign. Also the seizing and rescuing of stolen or strayed cattle from the hands of a thief or of those having illegal possession of it; also the reward fixed for such rescue.

FORFEITURE, a punishment annexed by law to some illegal act or negligence in the owner of things real, whereby the estate is transferred to another, who is usually the party injured. It is occasioned, 1st, by crimes, as treason, felony, &c.; 2nd, by alienation contrary to law, as a conveyance in mortmain,

made to corporations contrary to the statute law, or by particular tenants, when larger than their estates will warrant; 3rd, by lapse of a presentation to a church, &c.; 4th, by simony; 5th, by non-performance of conditions; 6th, by waste; 7th, by breach of copyhold customs; 8th, by bankruptcy and insolvency. *2 Bl. Com. chap. xviii.*

FORFEITURE OF MARRIAGE, an ancient writ which lay against him who, holding by knight's service, and being under age and unmarried, refused her whom the lord offered him without his disparagement, and married another. *F. N. B. 431; Reg. Orig. 163.*

FORGABULUM, or **FORGAVEL**, a quit rent; a small reserved rent in money.

FORGERY, the *crimen falsi*, or the false making of an instrument, which purports on the face of it to be good and valid for the purposes for which it was created, with a design to defraud a person.

The 9 Geo. IV., c. 32, provided (even before the late change of law, by which interested parties are now allowed to be competent witnesses) that the party whose name is forged may be a witness to prove that the writing is not his. But proof of forgery by comparison of handwriting is not admissible. Imitating the Great Seal, the Privy Seal, or any privy signet, the Sign-Manual, the Seals of Scotland, or the Great Seal and Privy Seal of Ireland, is deemed forgery. Forging and uttering Exchequer bills, Bank of England notes, bills of exchange, promissory notes, deeds, receipts, orders for the payment of money, transfers of stocks, &c., shall be felony. It is also felony to have in possession, without lawful excuse (such excuse to be proved by the party accused), any forged bank note, or the like, knowing it to be forged, or of having in possession (without such excuse) any frame, mould, &c., for paper, with the names of any banker visible in the substance of the paper. 11 Geo. IV. and 1 Wm. IV., c. 66.

The following is a list of statutes containing provisions against forgery in particular cases:—

Forgery as to records, &c.:—8 Hen. VI., c. 12; 8 Rich. II., c. 4; 2 & 3 Ann., c. 4; 5 & 6 Ann., c. 18; 7 Ann., c. 20; 8 Geo. II., c. 6; 52 Geo. III., c. 143; 1 & 2 Vict., c. 94.

As to public funds and stocks:—9 Geo. I., c. 12; 35 Geo. III., c. 66; 37 Geo. III., c. 46; 48 Geo. III., c. 142; 49 Geo. III., c. 64; 52 Geo. III., c. 129; 5 Geo. IV., c. 53; 10 Geo. IV., cc. 24, 50; 5 Vict., c. 8; 5 & 6 Vict., c. 66.

As to securities of public companies:—9 Ann., c. 21; 6 Geo. II., cc. 4, 11, 18; 39 Geo. III., c. 83; 1 Will. IV., c. 66.

As to stamps:—10 Ann., c. 19; 12 Ann., st. 2, c. 9; 3 Geo. I., c. 7; 6 Geo. I., c. 4; 4 Geo. III., c. 37; 13 Geo. III., cc. 52, 56; 24 Geo. III., sess. 2, c. 53; 52 Geo. III., c. 143; 54 Geo. III., cc. 133, 144; 55 Geo. III., c. 184; 1 Geo. IV., c. 58; 5 Geo. IV., c. 52; 7 & 8

Geo. IV., c. 28; 9 Geo. IV., c. 18; 2 & 3 Will. IV., c. 120; 3 & 4 Will. IV., c. 97; 6 & 7 Will. IV., c. 69; 3 & 4 Vict., c. 96; 4 & 5 Vict., c. 58; 5 & 6 Vict., c. 35; 5 & 6 Vict., c. 35; 6 & 7 Vict., c. 86; 7 Vict., c. 19; 7 & 8 Vict., c. 22.

As to official documents:—2 & 3 Ann., c. 4; 12 Geo. I., c. 32; 4 Geo. II., c. 18; 32 Geo. II., cc. 14, 55; 23 Geo. III., c. 70; 42 Geo. III., c. 116; 46 Geo. III., cc. 45, 69, 75, 76; 48 Geo. III., c. 82; 50 Geo. III., c. 41; 52 Geo. III., c. 143; 53 Geo. III., c. 151; 54 Geo. III., cc. 133, 151; 57 Geo. III., c. 34; 1 Geo. IV., c. 35; 3 Geo. IV., c. 86; 5 Geo. IV., c. 113; 6 Geo. IV., cc. 78, 113; 7 Geo. IV., c. 16; 7 & 8 Geo. IV., cc. 28, 53; 10 Geo. IV., cc. 24, 50; 11 Geo. IV. & 1 Will. IV., c. 20; 2 Will. IV., cc. 16, 34; 2 & 3 Will. IV., cc. 1, 106, 120, 125; 3 & 4 Will. IV., cc. 51, 97; 4 & 5 Will. IV., c. 15; 5 & 6 Will. IV., cc. 24, 45, 51; 6 & 7 Will. IV., cc. 5, 85, 86; 7 Will. IV. & 1 Vict., cc. 23, 86; 1 Vict., c. 36, § 34; 2 & 3 Vict., c. 51; 3 & 4 Vict., cc. 92, 96; 5 Vict., c. 8; 5 & 6 Vict., cc. 35, 36; 6 & 7 Vict., c. 86; 7 Vict., c. 19; 8 & 9 Vict., c. 113.

It is not necessary to set forth a copy or a *fac simile* of the forged instrument in the indictment, a description of it being sufficient. 2 & 3 Wm. IV., c. 123, § 3. The capital punishment, in all cases of forgery, is abolished. 7 Wm. IV. & 1 Vict., c. 84, § 1.

FORINSECUS, outlawed, or on the outside.

FORINSECUM MANERIUM, a manor as to that part of it which lies without the town, and not included within the liberties of it. *Puroch. Antiq. 351.*

FORINSECUM SERVITIUM, the payment of extraordinary aid. *Ken. Glos.*

FORISBANITUS, banished. *Mat. Par. 1245.* *Forisfacere*, i. e., *extra legem seu consuetudinem facere*. Co. Lit. 59.—(*Forisfacere*, i. e., to do something beyond law or custom.)

FORISFACTURA, forfeit.

FORISFAMILIATED, put in possession of land in a father's life-time.

FORLER-LAND, land in the bishopric of Hereford, which had a peculiar custom attached to it, but which has been long since disused, although the name is retained. *But. Surv. 56.*

Forma legalis forma essentialis. 10 Co. 100.—(Legal form is essential form.)

Forma non observata infertur adnullatio actus. 12 Co. 7.—(Form not being observed, a nullity of the act is inferred.)

FORMALITIES, robes worn by the magistrates of a city or corporation, &c., on solemn occasions. *Encyc. Lond.*

FORMEDON, a writ in the nature of a writ of right, which was the remedy for a tenant in tail on a discontinuance. Abolished by 3 & 4 Wm. IV., c. 27, § 36.

FORMELLA, a certain weight of above 70 lbs., mentioned in 51 Hen. III.

FORNAGIUM [*fournage*, Fr.], the fee taken by a lord of his tenant, bound to bake in the lord's common oven (*in furno domini*); or

for a permission to use their own. *Plac. Parl.*, 18 *Edw.* 1.

FORNICATION, the act of incontinency in single persons; for if either party be married, it is adultery. The Spiritual Court takes cognizance of the offence, and by 27 Geo. III., c. 44, the suit must be instituted within eight months, and not at all after the marriage of the parties offending.

FORPRISE, an exception or reservation; also an exaction.

FORSCHER, a strip of land lying next to the highway.

FORSCHOKE, forsaken.

FORSES [*catatudæ*], waterfalls. *Cam. Brit.*

FOR-SPECA, **FOR-SPRECA**, prolocutor, paranympus. *Anc. Inst. Eng.*

FORSPEAKER, an attorney or advocate in a cause. *Blount.*

Forstellarius est pauperum depressor, et totius communitatis et patriæ publicus inimicus. 3 *Inst.* 196.—(A forestaller is an oppressor of the poor, and a public enemy of the whole community and country.)

FORTALICE, a fortress or place of strength, which anciently did not pass without a special grant. 11 *Hen. VII.*, c. 18.

FORTHCOMING, *action of*, a process in the nature of a foreign attachment. *Scotch Law.*

FORTHWITH. When a defendant is ordered to plead *forthwith*, he must plead within twenty-four hours. See **INSTANTER**.

FORTIA, power, dominion, or jurisdiction. *Leg. Hen. I.*, c. 29.

FORTILITY, a fortified place; a castle; a bulwark.

Fortior est custodia legis quam hominis. 2 *Rol. Rep.* 325.—(The custody of the law is stronger than that of man.)

Fortior et æquior est dispositio legis quam hominis. *Co. Lit.* 234.—(The will of the law is stronger and more equal than that of man.)

FORTLETT, a place or fort of some strength; a little fort. *O. N. B.* 45.

FORTUNA, treasure-trove.

Fortunam faciunt iudicem. *Co. Lit.* 167.—(They make fortune a Judge.)

FORTUNE-TELLERS, persons pretending or professing to tell fortunes are punishable as rogues and vagabonds. 5 *G. IV.*, c. 83, § 2.

FORTUNIUM, a tournament or fighting with spears; and appeal to fortune therein. *Mat. Par.* 1841.

FORTY-DAYS' COURT, the court of attachment in forests, or woodmote court. See **FOREST**.

FORUM, the court to the jurisdiction of which a party is liable. *Forum competens*, a competent jurisdiction; *forum incompetens*, a court not authorised to try the cause, &c.

FORWARDING MERCHANT, a person who receives and forwards goods (commonly called a forwarding merchant), who takes upon himself the expenses of transportation, for which he receives a compensation from the owners, but who has no concern in the vessels or waggon by which they are trans-

ported, and no interest in the freight, and is not deemed a common carrier; but he is a merewarehouseman and agent. *Story's Bailments*, 509.

FOSA, a ditch full of water, wherein women committing felony were drowned; also a grave. See **FURCA**.

FOSSAGIUM, the duty levied on the inhabitants for repairing the moat or ditch round a fortified town.

FOSSWAY [*fossus*, Lat., digged], one of the four ancient Roman ways through England. Trevisa describes it thus:—"The first and gretest of the foure weyes is called fosse, and stretcheth oute of the south into the north, and begynneth from the corner of Cornewaille, and passeth forth by Devenshyre, by Somersete, and forth besides Tetbury, upon Cotteswold, beside Coventre, unto Leycestre, and so forth, by wyld pleynes toward Newerke, and endeth at Lincoln." *Polychron.*, l. i. c. 45.

FOSTERLAND, lands allotted for the maintenance of a person.

FOSTERLEAN, the remuneration fixed for the rearing of a foster-child.

FOUNDATION, the founding or building of a college or hospital. The incorporation of a college or hospital is the very foundation; and he who endows it with land or other property is the founder.

FOURCHING, the act of delaying legal proceedings.

FOUTGELD. See **FOOTGELD**.

FOWLS OF WARREN. While Coke says they are the partridge, quail, rail, pheasant, woodcock, mallard, heron, &c.; Manwood says, they are the pheasant and partridge only. *Co. Lit.* 233 a; *Manw.* 95.

FOY [*foi*, Fr.], faith; allegiance.

FRACTION OF A DAY, the law makes no fraction of time, but in cases of necessity; when, therefore, a thing is to be done upon one day, all that day is allowed to do it in.

FRACTITIUM, arable land.

FRACTURA NAVIUM, wreck of shipping at sea.

FRAMPOLE, profitable, *sed quære*.

FRANCHILANUS, a freeman.

FRANCHISE, an incorporeal hereditament, synonymous to liberty. A royal privilege or branch of the Crown's prerogative, subsisting in the hands of a subject. It arises either from royal grants, or from prescription, which presupposes a grant. The kinds are almost infinite, but the principal are bodies corporate, the right to hold court-leets, fairs, markets, ferries, forests, chases, parks, warrens, fisheries. The remedy for disturbance is an action on the case.

Also, the right of voting in an election for a member of Parliament.

Francus bancus; consuetudo est quod uxores maritorum defunctorum habeant francum bancum suum de terris sockmannorum tenent nomine dotis. *Co. Lit.* 110.—(Free bench; it is a custom that wives of deceased husbands have their free bench from the lands held in socage in the name of dower.)

Frangenti fidem, fides frangatur eidem.—(Let faith be broken to him who breaketh faith.)

FRANK, a letter that paid no postage. Members of Parliament, peers, &c., had the privilege of franking their letters, which has been abolished since the introduction of the penny postage. 3 & 4 Vict., c. 96.

FRANK-ALMOIGN, free alms. A spiritual tenure whereby a religious corporation, aggregate or sole, holds lands of the donor to them and their successors for ever. They were discharged of all other except religious services, and the *trinoda necessitas*. It differs from tenure by divine service, in that the latter has certain divine services to perform, but the latter, as its name imports, is free. This tenure is expressly excepted in the 12 Car. II., c. 24, § 7, and therefore subsists, in many instances, at this day.

FRANK-BANK. See **FREE-BENCH**.

FRANK-CHASE, a liberty of free chase.

FRANK-FEE, freehold lands exempted from all services, but not from homage.

FRANK-FERM, lands or tenements, changed in the nature of the fee by feoffment, &c., out of knight service, for certain yearly acknowledgments. *Britton*, c. 64.

FRANK-FOLD. See **FOLDAGE**.

FRANK-LAW, the benefit of the fee and common law of the land.

FRANK-MARRIAGE [*in libero maritagio*], a species of entailed estates, now grown out of use, but still capable of subsisting.

Where tenements are given by one to another, together with a wife, who is a daughter or cousin of the donor, to hold in frank-marriage, the donees shall have the tenements to them and the heirs of their two bodies begotten, *i. e.*, in special tail. For the word *frank-marriage*, *ex vi termini*, both creates and limits an inheritance, not only supplying words of descent, but also terms of procreation. The donees are liable to no service except fealty, and a reserved rent would be void, until the fourth degree of consanguinity be past between the issues of the donor and donee, when they were capable by the law of the church of intermarrying. *Litt.* § 19.

FRANK-PLEDGE, a surety to the sovereign for the good behaviour of freemen. Living under frank-pledge has been termed living under law. *Fleta*, i. 47.

FRANK-TENEMENT [*liberum tenementum*], a freehold estate.

FRANKLIN, a steward; a bailiff of land.

FRASSETUM, a wood or wood-ground, where ash-trees grow. *Co. Lit.* 4.

FRATER CONSANGUINEUS, a brother by the father's side.

Frater fratri uterino non succedet in hæreditate paternâ.—(A brother shall not succeed an uterine brother in the paternal inheritance.)

This maxim is now superseded; for, by 3 & 4 Wm. IV., c. 106, § 9, it is enacted that the half-blood shall inherit next after any relation in the same degree of the whole blood and his issue, where the common ancestor is a male, and next after the common

ancestor where a female, so that the brother of the half-blood, on the part of the father, shall inherit next after the sisters of the whole blood on the part of the father and their issue, and the brother of the half-blood on the part of the mother, shall inherit next after the mother.

FRATER NUTRICIUS, a bastard brother.

FRATER UTERINUS, a brothers by the mother's side.

FRATERNITIES, bodies corporate.

FRATRES CONJURATI, sworn brothers, or companions for the defence of their sovereign.

FRATRIAGE, a younger brother's inheritance.

FRAUD, all deceitful practices in defrauding or endeavouring to defraud another of his known right, by means of some artful device, contrary to the plain rule of common honesty. It is condemned by the common law, and punishable according to the heinousness of the offence.

Lord Harkwicke has enumerated five species of fraud: 1st, fraud arising from facts and circumstances of imposition, which is the plainest case; 2nd, fraud may be apparent from the intrinsic value, and subject of the bargain itself, such as no man in his senses, and not under delusion, would make on the one hand, and as no honest or fair man would accept on the other; which are inequitable and unconscionable bargains, and of such even the common law has taken notice; 3rd, fraud which may be presumed from the circumstances and condition of the parties contracting; and this goes farther than the rule of law, which is, that fraud must be proved, not presumed; but it is wisely established in this court, to prevent taking surreptitious advantages of the weakness or necessity of another, which, knowingly to do, is equally against conscience as to take advantage of his ignorance; 4th, fraud may be collected or inferred in the consideration of a court of equity, from the nature and circumstances of the transaction, as being an imposition and deceit on other persons not parties to the fraudulent agreement; and 5th, fraud in what are calling catching bargains with heirs, reversioners, or expectants in the lifetime, &c., of the parents, which indeed seem to fall under one or more of the preceding heads.

It is, however, impossible to lay down a general proposition that shall completely constitute fraud, and any rule that may be established cannot, from the very nature of fraud, be invariable. Fraud is infinite. "*Crescit in orbe dolus.*" The ingenuity of mankind is ever anxious, ever striving to entangle in its meshes the unwary and the inexperienced, and were courts of equity to prescribe the limits of their relief against fraud, or to define strictly the species of evidence receivable in support of it, their decrees would be ineffectual and continually eluded by man's ever active ingenuity; to afford, therefore, complete protection from the lamentable turpitude of humanity, new principles must

he created to meet new species of fraud. *Criminal* fraud is not recognizable by an equity court, but only *civil* fraud, in all cases of which, the remedy does not die with the person, but the same relief may be obtained against the representative of the person committing the fraud. The Statute of Limitations cannot be pleaded to a bill for the discovery merely of a fraud. "No length of time," most emphatically observed, Lord Erskine, "can prevent the unkennelling of fraud." And Lord Northington said, "The next question is in effect whether delay will purge a fraud? Never, while I sit here. Every delay arising from it adds to its injustice, and multiplies the oppression." *Alden v. Gregory*, 2 Eden 285.

Equity has concurrent jurisdiction with courts of law in all cases of fraud *not penal*, with the exceptions of fraud in obtaining a will relating to real estate, which exclusively belongs to the consideration of a court of law, and in obtaining a will, relating to personal estate, which is exclusively decided upon in the Spiritual Court.

The following rules have been laid down upon the subject of fraud.

1. The rule of law as to fraud is considered as a good rule in equity, viz., that fraud is never to be presumed; it must be proved either expressly or by necessary consequence from the acts done: "*Dolum non nisi perspicuis indicis probari convenit*," but that may be a fraud in equity (where it is said there may be *presumptive* fraud), which is not so at law.

2. An impeached deed cannot be supported by evidence of considerations wholly different from those alleged in it.

3. If the principal in a fraud be released, parties who would have been secondarily liable cannot be proceeded against.

4. A deed cannot be set aside in part for fraud. If set aside at all, it must be set aside *in toto*, and if obtained by fraud, it will be set aside *in toto*, though innocent persons are interested under it.

If an instrument be obtained from persons ignorant of their rights, but whose rights are known to the party obtaining the instrument, a court of equity will relieve, even though no fraud or imposition have been practised.

Suppressio veri (suppression of truth), or *suggestio falsi* (suggestion of falsehood), in solemn conveyances, releases, or agreements, will afford a sufficient ground for setting them aside.

There are a variety of cases where a person standing by, and by silence contributing to a fraud, has been compelled to remedy the mischief his fraudulent silence has occasioned.

There is no case where mere inadequacy of price, independent of other circumstances, has been held sufficient to set aside a transaction. A bargain may be hard and unconscionable, and yet valid, unless the inadequacy of price is such as "*shocks the conscience*," and amounts in itself to conclusive and decisive evidence of fraud in the transaction. The inequality must be so gross,

that a man would start at the bare mention of it: but inadequacy is not to be measured by a little on one side or the other, by this or that excess; if so, where shall we cast anchor?

A voluntary conveyance (unless obtained by imposition or fraud, as from a person of weak intellect,) is good against the party making it, though cancelled, and against all subsequent acts of the donor, whether by deed or will, though the devise be for the payment of debts, for the court "will not loose the fetters the party hath put upon himself; but he must lie down under his own folly." But as against purchasers as well of equitable as legal estates for a valuable consideration, even where the purchase was made with notice of the prior settlement and also as against those who were creditors at the time of the making of it, a voluntary conveyance is void. 27 *Eliz.*, c. 4.

A settlement, however, though voluntary at first, and therefore bad as against creditors and purchasers, may afterwards become good, even against them; as, where the object of the settlement sells to another; or where a father settles lands on a daughter, and a person marries her in confidence of such settlement, it may be enforced.

Although drunkenness is a kind of insanity for the time, yet as it is of its own procuring, it shall not turn to his avail, either to derogate from his act, or to lessen his punishment, for it is a great offence in itself; and this holds as well to his life, his lands, his goods, or anything concerning him. It seems, however, that equity will relieve in this case, especially if it were caused by the fraud or contrivance of the other party, and he is so excessively drunk that he is utterly deprived of the use of reason or understanding; for it can by no means be a serious and deliberate consent; and without this, no contract can be binding by the law of nature. Where a plaintiff did not even contribute to make the defendant drunk, but entered into an agreement with him when drunk, and a bill was filed for a specific performance, it was dismissed with costs. And so, although there is no direct proof that a man is *non compos*, or delirious, yet, if he be of a weak understanding, and be harassed and uneasy at the time; or if the deed be executed *in extremis* (in the last moments), or during a paralysis, it cannot be supposed he had a mind adequate to the business he was about, and might, therefore, more easily be imposed upon, especially if the provision in the deed be something extraordinary, or the conveyance is without any consideration. 1 *Fonb. Eq.* 67; *Butler v. Mulvihill* in D. P., 1 Bli. 137.

Where deeds are set aside for fraud, they will generally be permitted to stand as a security for what is really due. *Wharton v. May*, 5 Ves. 59; 1 *Madd. Prin. of Equity*, tit. *Fraud*.

FRAUD, CONSTRUCTIVE, such acts or

contracts as, though not originating in any actual evil design, or contrivance to perpetuate a positive fraud or injury upon other persons, yet, by their tendency to deceive or mislead other persons, or to violate public or private confidence, or to impair or injure the public interests, are deemed equally reprehensible with positive fraud, and therefore are prohibited by law, as within the same reason and mischief, as acts and contracts done *malo animo*.

Thus in order to prevent injustice and shut out all inducement to perpetuate a wrong, certain cases are held to be fraudulent, because they are contrary to some general policy, or to some fixed artificial legal principle, as marriage-brokerage-bonds, contracts in restraint of trade. Other transactions again grow out of some special confidential or fiduciary relation between the parties, or some of them, which are watched with especial jealousy and solicitude, because they afford the power and the means of taking undue advantage or of exercising undue influence over others: such are transactions between parent and child, attorney and client, principal and agent or surety, guardian and ward, trustee and cestui que trust, partners, &c. Others again are of a mixed character, combining, in some degree, the ingredients of the preceding, with others of a peculiar nature; but they are chiefly prohibited, because they operate substantially as a fraud upon the private rights, interests, duties, or intentions of third parties; or unconscientiously compromise, or injuriously affect the private interests, rights, or duties of the parties themselves, such as secret composition-deeds, voluntary conveyances, &c. 1 *Story's Eq. Jurisp.* 213.

FRAUDS AND PERJURIES, *Statute of*, 29 Car. II., c. 3, A. D. 1677. It enacts, for the prevention of many fraudulent practices, that all agreements respecting land shall be in writing, except leases not exceeding three years, two-thirds of the value being reserved for rent. Also all assignments and surrenders, all real property contracts, declarations of trust, except by implication and personal engagements above 10*l.*, are to be in writing.

The 5th, 6th, 12th, 19th, 20th, 21st, and 22d §§ are revoked by 1 Vict., c. 26, § 2.

"This statute carries its influence," remarks Mr. Chancellor Kent (2 *Comm.* 494, n. d), "through the whole body of American civil jurisprudence, and is, in many respects, the most comprehensive, salutary, and important legislative regulation on record affecting the security of private rights." Sir Matthew Hale is supposed to have framed it. "Every line of it deserves a subsidy," it has been said. It cost, however, for explaining its provisions in our courts of law and equity, 100,000*l.*

FRAUDULENT CONVEYANCES, *Statutes against*, 13 Eliz., c. 5, A. D. 1570, made perpetual by 29 Eliz., c. 5. It enacts that every conveyance of lands, hereditaments, goods, and chattels, or of any lease, rent, common, or other profit or charge, out of lands, &c., by

writing or otherwise, and every bond, suit, judgment, and execution to be had or made with the intent to defraud creditors or others of their actions, suits, debts, accounts, damages, penalties, forfeitures, heriots, mortuaries, and reliefs, shall be deemed (only as against that person, his heirs, executors, administrators, and assigns, whose actions, &c., are or shall be any way disturbed, delayed, or defrauded) to be utterly void.

The 27 Eliz., c. 4, § 2, made perpetual by 39 Eliz., c. 18, enacts that every conveyance of lands, tenements, or other hereditaments whatsoever, had or made with the intent and purpose to defraud and deceive any person or persons, bodies politic or corporate, who shall purchase the same, shall be deemed and taken (only as against that person or persons, body politic or corporate, his and their heirs, successors, executors, administrators, and assigns), to be utterly void, frustrate, and of none effect.

The deeds which are rendered void by these statutes are of two sorts:—1. Deeds made with an express intent to defraud creditors or subsequent purchasers. 2. Deeds made upon good but not valuable considerations, which are usually called voluntary conveyances. *Roberts' Essay on Fraud. Conv.*

FRAUNC FERME. See **FRANK-FERM**.

Fraus est celare fraudem. 1 Vern. 270.—(It is fraud to conceal fraud.)

Fraus est odiosa et non præsumenda. Cro. Car. 550.—(Fraud is odious and not to be presumed.)

Fraus et dolus nemini patrocinari debent. 3 Co. 78.—(Fraud and deceit ought to be defended to no person.)

Fraus et jus nunquam cohabitant. Wing. 680.—(Fraud and justice never agree together.)

Fraus latet in generalibus.—(Fraud lies hid in general expressions.)

FRAUS LEGIS (fraud of law), using legal proceedings with a felonious purpose.

Fraus meretur fraudem. Plow. 100.—(Fraud merits fraud.)

FRAXINETUM, a wood of ash trees.

FRAY. See **AFFRAY**.

FRED, peace.

FREDSTOLE, or **FRIDSTOLL**, sanctuaries, seats of peace. *Gibson's Camden*.

FREDUM, a composition anciently paid by a criminal to be freed from prosecution, of which the third part was lodged in the Exchequer.

FREDWIT, a liberty to hold courts and make amerciaments.

FREE-BENCH [*sedes libera*], that estate in copyhold which a wife has on her husband's death for her dower, according to custom: it is said the wife ought to be espoused a virgin, and is to hold the land only so long as she lives sole and continent. *Kitch.* 102. This interest is unaffected by the Dower Act, 3 & 4 Wm. IV., c. 105.

FREE-BOARD, ground claimed in some places, more or less, beyond or without the fence, said to be two feet and a half. *Mon. Ang.*, t. 2, p. 141.

FREE-BOROUGH MEN, such great men as

did not engage like the frank-pledge men for their decennier.

FREE-CHAPEL, a place of worship, so called because not liable to the visitation of the ordinary. It is always of royal foundation, or founded at least by private persons to whom the Crown has granted the privilege. 1 *Burn's E. L.* 298.

FREE-FISHERY, a royal franchise, being the exclusive right of fishing in a public river. Grants of this description cannot now be made, the Great Charter and its confirmations prohibiting it.

FREEHOLD, such an interest in lands of frank-tenement as may endure not only during the owner's life, but which is cast after his death upon the persons who successively represent him, according to certain rules elsewhere explained. Such persons are called *heirs*, and he whom they thus represent, the *ancestor*. When the interest extends beyond the ancestor's life, it is called a *freehold of inheritance*, and when it only endures for the ancestor's life, it is a freehold not of inheritance. An estate to be a freehold, must possess these two qualities: 1. Immobility, that is, the property must be either land, or some interest issuing out of or annexed to land; and, 2, a sufficient legal indeterminate duration; for if the utmost period of time to which an estate can endure be fixed and determined, it cannot be a freehold.

FREE-HOLDER, he who possesses a freehold estate.

FREE-MAN [*liber homo*], an allodial proprietor; one born or made free of certain municipal immunities and privileges.

FREE-MAN'S ROLL, a list of all persons admitted burgesses, or freemen of those rights which are reserved by the Municipal Corporation Act (5 & 6 Wm. IV., c. 76), as distinguished from the burgesses newly created by the act, and entitled to the rights which it newly confers, who are entered on the burgess-roll.

FREE-SERVICES, such as were not unbecoming the character of a soldier or a freeman to perform, as to serve under his lord in the wars, to pay a sum of money, or the like.

FREE-WARREN, a royal franchise, granted by the Crown to a subject for preservation, or custody of beasts and fowls of warren.

FREIGHT, the sum paid by the merchant or other person hiring a ship or part of a ship, for the use of such ship or part, during a specified voyage, or for a specified time. The freight is most commonly fixed by the charter party, or bill of lading, but in the absence of any formal stipulations on the subject, it would be due according to the custom or usage of trade. In the absence of an express contract to the contrary, the entire freight is not earned until the whole cargo be ready for delivery, or has been delivered to the consignee, according to the contract for its conveyance. *McCulloch's Com. Dict.*

FREND-WITE [*freond*, Sax., friend, and *wite*, mulct], a fine exacted of him who harboured an outlawed friend.

Frequentia actus multum operatur. 4 Co. 79.—

(The frequency of an act operates much.)

FRESCA, fresh water.

FRESH DISSEISIN, that disseisin which a person might formerly seek to defeat of himself, and by his own power, without resorting to the law; as where it was not above fifteen days old, or of some other short continuance. *Britton*, c. 5.

FRESH-FINE, a fine that had been levied within a year past.

FRESH-FORCE, a force newly done in any city, borough, &c.

FRESH SUIT, or **PURSUIT**, such a present and earnest following of a robber as never ceases from the robbery until apprehension. The party pursuing will then have his goods back again, which otherwise are forfeited to the Crown.

FRETUM BRITANNICUM, the straits between Dover and Calais.

FRETTUM FRECTUM, the freight of a ship; freight money.

FRIBOURGH, or **FRITHBURGH**, the Norman term for frank-pledge.

FRIENDLESS MAN, an outlaw, because he was denied all help of friends.

FRIENDLY SOCIETIES, associations supported by subscription for the mutual relief and maintenance of its members or their wives, children, relations, and nominees, against certain casualties, as those of sickness, infancy, advanced age, widowhood, &c. The statutes governing them are the 10 Geo. IV., c. 56; the 4 & 5 Wm. IV., c. 40; and the 3 & 4 Vict. c., 73.

FRIAR [*frater*, Lat., brother], an order of religious persons, of whom there were four principal branches, viz.: 1. Minors, Grey Friars, or Franciscans; 2. Augustines; 3. Dominicans, or Black Friars; 4. White Friars, or Carmelites, from whom the rest descend.

FRILING, or **FREOLING** [*freoh*, Sax., free and *ling*, progenies], a freeman born.

FRISCUS, fresh uncultivated ground. *Mon. Ang.*, i. 2, p. 56.

FRITH-BORG, frankpledge.

FRITHBREACH, the breaking of the peace.

FRITHGAR, the year of jubilee, or of meeting for peace and friendship.

FRITHGILD, a guildhall; a company or fraternity for the maintenance of peace and security; also a fine for breach of the peace.

FRITHMAN, a member of a company or fraternity.

FRITH-SOCN, **FRITH-STOL**, an asylum; sanctuary.

FRITHSOKE, **FRITHSOKEN**, the right or liberty of frankpledge.

FRITH-SPLOT, or **FRITH-GEARD**, a spot or plot of land, encircling some stone, tree, or well, considered sacred, and therefore affording sanctuary to criminals.

FRODMORTEL, or **FREOMORTEL**, an immunity for committing manslaughter.

FRUCTUS INDUSTRIALES, emblements.

FRUMGYLD, the first payment made to the kindred of a person slain, towards the recompence of his murder.

FRUMSTOL, original or paternal dwelling.

Anc. Inst. Eng.

FRUSCA TERRÆ, waste and desert lands.

FRUSSURA, a breaking; ploughing.

Frustrè est potentia quæ nunquam venit in actum. 2 Co. 51.—(The power which never comes into act, is in vain.)

Frustrè expectatur eventus cujus effectus nullus sequitur. 5 Co. Eccl. L.—(An event is vainly expected whose no effect follows.)

Frustrè feruntur leges nisi subditis et obedientibus. 7 Co. 13.—(Laws are administered in vain unless to those subject and obedient.)

Frustrè fit per plura, quod fieri potest per pauciora. Jenk. Cent. 68.—(That is done vainly by many things, that might be done by less.)

Frustrè legis auxilium quærit qui in legem committit. (Vainly does he who offends against law, seek the help of law.)

Frustrè petis quod statim alteri reddere cogeris. Jenk. Cent. 256.—(Vainly you beg that which you may immediately force another to restore.)

Frustrè probatur quod probatum non relevat. —(That is vainly proved which, being proved, would not aid the matter in question.)

FRUSTRUM TERRÆ, a small piece or parcel of land.

FRUTECTUM, a place where shrubs or herbs grow.

FRYMTH, FYRMTH, the affording harbour and entertainment to any one. *Anc. Inst. Eng.*

FUAGE. See FUMAGE.

FUER, flight. It is of two kinds:—(1) *fuer in suit*, or *in facto*, where a person does apparently and corporally flee; (2) *fuer in ley*, or *in lege*, when being called in the county court he does not appear, which legal interpretation makes flight.

FUGA CATALLORUM, a drove of cattle.

FUGACIA, a chase.

FUGAM FECIT (he has made flight), said of a person who is found by inquisition to have fled for felony, &c., upon which forfeiture of goods took place. Not now practised. 7 & 8 Geo. IV., c. 28, § 5.

In Scotland, where a criminal does not obey the citation to answer, the court pronounces sentence of fugitation against him, which induces a forfeiture of goods and chattels to the Crown.

FUGATIO, a privilege to hunt. *Blount.*

FUGATORES CARRUCARUM, waggoners, who drive oxen without beating or goading. *Fleta*, l. 2, c. 78.

FULL AGE. See AGE.

FULLUM AQUÆ, a steam or stream of water.

FUMAGE, or FUAGE (vulgarly called *smoke-furthings*), a tax paid to the sovereign for every house that had a chimney. It is probable that the *hearth-money*, imposed by 13 & 14 Car. II., c. 10, took its original hence. This hearth-money was declared a great oppression, and abolished by 1 W. & M., st. 1, c. 10; but a tax was afterwards laid upon all houses, except cottages, and upon all windows, by 7 Wm. III., c. 18.

FUNCTION [*fungor*, Lat., to perform], employment; discharge of office.

FUNCTUS OFFICIO (discharged from duty).

Fundatio est quasi fundi datio; et appellatione fundi ædificium et ager continentur. 10 Co. 33.—(Foundation is, as it were, a giving of revenue or fund; and under the term, "fundus," building and land are comprised.)

FUNDI PATRIMONIALES (lands of inheritance).

FUNDITORES, pioneers.

FUNDS, *public*, the name given to the public funded debt due by government.

The practice of borrowing money in order to defray a part of the war expenditure began, in this country, in the reign of William III. In the infancy of the practice, it was customary to borrow upon the security of some tax, or portion of a tax, set apart as a fund for discharging the principal and interest of the sum borrowed. This discharge was, however, very rarely effected. The public exigencies still continuing, the loans were, in most cases, either continued, or the taxes were again mortgaged for fresh ones. At length the practice of borrowing for a fixed period, or, as it is commonly termed, upon *terminable* annuities, was almost entirely abandoned, and most loans were made upon *interminable* annuities, or until such time as it might be convenient for government to pay off the principal.

In the beginning of the funding system, the term "*fund*" meant the taxes or funds appropriated to the discharge of the principal and interest of loans; those who held government securities, and sold them to others, selling, of course, a corresponding claim upon such fund. But after the debt began to grow large, and the practice of borrowing upon interminable annuities had been introduced, the meaning attached to the term "*fund*" was gradually changed; and instead of signifying the security upon which loans were advanced, it has, for a long time, signified the principal of the loans themselves.

The different funds or stocks constituting the public debt are the following:—

I. Funds bearing interest at three per cent.

(a) *South Sea Debt and Annuities.*—This portion of the debt, amounting on the 5th of January, 1843, to 10,144,584*l.*, is all that now remains of the capital of the once famous, or rather infamous, South Sea Company. The Company has, for a considerable time past, ceased to have any thing to do with trade: so that the functions of the directors are wholly restricted to the transfer of the Company's stock, and the payment of the dividends on it; both of which operations are performed at the South Sea House, and not at the Bank. The dividends on the Old South Sea Annuities are payable on the 5th of April and 10th of October; the dividends on the rest of the Company's stock are payable on the 5th of January and 5th of July.

(b) *Debt due to the Bank of England.*—This consists of the sum of 11,015,100*l.*, lent by the bank to the public at three per cent., dividends payable on the 5th of April and 10th of October. This must not be confounded with the bank capital of 10,914,750*l.*, on which the stockholders divide. The dividend on the latter has been seven per cent. since 1839.

(c) *Bank annuities created in 1726.*—The capital is irredeemable; and being small, in comparison with the other public funds, and a stock in which little is done on speculation, the price is generally, at least, one per cent. lower than the three per cent. consols.

(d) *Three per cent. consols, or consolidated annuities.*—This stock forms by much the largest portion of the public debt. It had its origin in 1751, when an act was passed consolidating (hence the name) several separate stocks, bearing an interest of three per cent., into one general stock.

(e) *Three per cent. reduced annuities.*—This fund was established in 1757. It consisted, as the name implies, of several funds which had previously been borrowed at a higher rate of interest; but, by an act passed in 1749, it was declared that such holders of the funds in question as did not choose to accept in future of a reduced interest of three per cent., should be paid off—an alternative which comparatively few embraced.

II. Funds bearing more than three per cent. interest.

(a) *Annuities at 3½ per cent., 1818.*—This stock was formed in 1818, partly by a subscription of three per cent. consolidated, and three per cent. reduced annuities, and partly by a subscription of exchequer bills. It was made redeemable at par any time after the 5th of April, 1829, upon six months' notice being given. Dividends payable on the 5th of April and 10th of October.

(b) *Reduced 3½ per cent. annuities.*—This stock was created in 1824, by the transfer of a stock bearing interest at four per cent. (old four per cents). It is redeemable at pleasure. Dividends payable 5th of April and 10th of October.

(c) *New 3½ per cent. annuities.*—This stock was formed by the 11 Geo. III., c. 13, out of the stock known by the name of "new four per cents.," amounting, on the 5th of January, 1830, to 144,331,212*l.* The holders of this four per cent. stock had their option either to subscribe it into the new 3½ per cent. annuities, or into a new five per cent. stock, at the rate of 100*l.* four per cents. for 70*l.* five per cents. Dissentients to be paid off. Only, 467,713*l.* new five per cent. stock was created under this arrangement. The sum required to pay dissentients was 2,610,000*l.* The new 3½ per cent. stock thus created, amounted, on the 5th of January, 1843, to 144,632,521*l.* Dividends payable 5th of January and 5th of July.

(d) *New five per cent.*

III. Annuities.

(a) *Long Annuities.*—These annuities

were created at different periods, but they all expire together in 1860. They were chiefly granted by way of premia or douceurs to the subscribers to loans. Payable on the 5th of April and 10th of October.

(b) *Annuities, per 4 Geo. IV., c. 22.*—This annuity is payable to the Bank of England, and is commonly known by the name of the "Dead Weight" annuity. It expires in 1867. It is equivalent to a perpetual annuity of 470,319*l.* 10*s.*

(c) *Annuities per 48 Geo. III., 10 Geo. IV., c. 24, and 3 & 4 Will. IV., c. 14.*—These acts authorised the commissioners for the reduction of the national debt to grant annuities for terms of years, and life annuities, accepting in payment either money or stock, according to rates specified in tables, to be approved by the Lords of the Treasury. No annuities are granted on the life of any nominee under fifteen years of age, nor in any case not approved by the commissioners. Annuities for terms of years not granted for any period less than ten years. These annuities are transferable, but not in parts or shares. Those for terms of years, payable 5th of January and 5th of July; and those for lives, 5th of April and 10th of October.

Foreign funds.—Exclusive of the funded and unfunded debt due by the British Government, more than nineteen-twentieths of which is held by British subjects; our countrymen are also large creditors of foreign states.

With the exception of Spain, the interest on the debts of most European states is paid with great regularity; and their funds form what may, on the whole, be reckoned, at least so long as peace is preserved, a pretty secure investment. Our countrymen are also large creditors of the new South American States, and of the United States of North America. Owing, however, to the anarchy in which the former have been almost constantly involved, and the consequent want of power, and probably also of inclination on the part of their rulers, to make any adequate provision for the payment of their debts, a large arrear of interest has, in most instances, been allowed to accumulate, with but little prospect of its being speedily reduced. *McCulloch's Comm. Dict.*

FUNDUS. The primary signification of this word appears to be, the bottom or foundation of a thing; and its elementary part (*fud*) seems to be the same as that of *βυθ*, *δς*, and *πυθ*, *μην*, the *n* in *fundus* being used to strengthen the syllable. The conjectures of the Latin writers as to the etymology of *fundus*, may be safely neglected. *Fundus* is often used as applied to land, the solid substratum of all man's labours. *Smith Dict. of Antiq.*

FUNERAL CHARGES. An executor or administrator should bury the deceased testator or intestate in a manner suitable to the estate he has left, which will be allowed before all other debts and charges; but if the personal representative be extravagant,

he commits a *deunstavit*, which will be prejudicial to himself and not to the creditors or legatees.

FUNGIBLES, moveable goods, which may be estimated by weight, number, or measure; such as corn, wine, or money.

FURANDI, ANIMUS (an intent of stealing).

FURCA [*farkah*, Heb., to divide], the gallows.

FURCAM ET FLAGELLUM (the gallows and whip), the meanest of all servile tenures, when the bondman was at his lord's disposal, both life and limb.

FURIGELDUM, a mulct paid for theft.

FURIOSITY, madness, as distinguished from *fatuity* or idiocy.

Furius absentis loco est. Non multum distans à brutis qui ratione carent. 4 Co. 126.

—(A man furious is like a man who is absent. Those who want reason are not far removed from brutes.)

Furius solo furore punitur. Co. Lit. 247.—(A madman is punished by his madness alone.)

Furius stipulare non potest, nec aliquid negotium agere, qui non intelligit quid agit. 4

Co. 126.—(A madman who knows not what he does, cannot make a bargain, nor transact any business.)

FURNAGIUM. See **FORNAGIUM**.

FURST AND FONDUNG, time to advise or take counsel.

FURTHER ADVANCE or CHARGE, a second or subsequent loan of money to a mortgagor by a mortgagee, either upon the same security as the original loan was advanced upon, or an additional security. Equity considers the arrears of interest on a mortgage security converted into principal by agreement between the parties, as a further advance.

FURTHER ASSURANCE, *covenant for*, one of the usual conventions entered into by a vendor for the protection of the vendee's interest in the subject of purchase. It seems to be confined to an assurance by way of conveyance, and not to extend to further obligations to be imposed on the covenantor by way of covenant. 2 Sug. V. & P. 98, 103; *Woodfall's Land. & Tent.* 491.

FURTHER DIRECTIONS. When a Master ordinary in Chancery has made a report in pursuance of a decree or decretal order, the cause is again set down before the Judge who made the decree or order, that it may be proceeded with and completed. Where a Master makes a separate report, or one not in pursuance of a decree or decretal order, a petition for consequential directions should be presented, since the cause cannot be set down for further directions under such circumstances.

FURTUM, theft; robbery.

Furtum est contrectatio rei alienæ fraudulenta, cum animo furandi, invito illo domino cujus res illa fuerat. 3 Inst. 107.—(A theft is the fraudulent handling of another's property, with an intention of stealing, the proprietor, whose property it was, not bidding it.)

Furtum non est ubi initium habet detentionis

per dominum rei. 3 Inst. 107.—(It is not theft where the commencement of the detention arises through the owner of the thing.)

FUTURE ESTATES, expectancies, which are, at the common law, of two kinds:—reversions and remainder.

FUTURE USES. See **CONTINGENT USES**.

FYHT-WITE, one of the fines incurred for homicide.

FYRD, FYRDUNG, the military array or land force of the whole country. Contribution to the fyrd was one of the imposts forming the *trinoda necessitas*.

FYRD-WITE, the fine incurred by neglecting to join the fyrd; one of the rights of the Crown. *Anc. Inst. Eng.*

G

GABEL [*gabelle*, Fr., *gabella*, Ital., *gafel*, Sax.], an excise, a tax on moveables; a rent, custom, or service. Co. Lit. 213.

GABULUS DENARIORUM, rent paid in money. Seld. Tit. 321.

GAFFOLDGILD, the payment of custom or tribute. Scott.

GAFFOLDLAND, property subject to the gaffoldgild, or liable to the taxed. *Ibid.*

GAFOL, rent.

GAGE [*gage*, Fr.], a pledge, pawn, or caution; anything given in security.

GAGE, estates in, those held in *radio* or pledge. They are of two kinds:—(1) *vivum vadium*, or living pledge; (2) *mortuum vadium*, or dead pledge, better known as mortgage.

GAGER DE DELIVERANCE, when he who has distrained, being sued, has not delivered the cattle distrained; then he shall not only avow the distress, but *gager deliverance*, i. e., put in surety or pledge, that he will deliver them. F. N. B. 67.

GAGER DEL LEY (wager of law).

GAINAGE [*gainagium*, Lat.], the gain or profit of tilled or planted land, raised by cultivating it; and the draught, plough, and furniture for carrying on the work of tillage by the baser kind of *sokemen* or *villeins*. Bract. l. i. c. 9.

GAINERY [*gaignerie*, Fr.], tillage or the profit arising from it, or of the beasts employed therein. Stat. West. 1, cc. 16, 17.

GALE [*gavel*, Sax.; a rent or duty], a periodical payment of rent. *Spehn.* voce "*gabellum*."

GALLI-HALFPENCE, a kind of coin which, with suskins and doitkins, were forbidden by 3 Hen. V., c. 1.

GALLIVOLATIUM [*gallus*, Lat., cock], a cock-shoot or cock-glade.

GALLOWS [it is used by some in the singular, but more generally in the plural. *Golgo*, Goth, *gealga*, Sax., *galge*, Dut., from *ugælan*, Sax., to fright], a beam laid over either one or two posts, on which malefactors are hanged. *Encyc. Lond.*

GAME [*gaman*, Sax.], all sorts of birds and beasts that are objects of the chase. The term is defined by 1 & 2 Wm. IV., c. 32, as

including hares, pheasants, partridges, grouse, heath or moor-game, black-game, and bustards: but some of its provisions are also directed to woodcocks, snipes, quails, landrails, and conies.

This act repeals the Qualification Act of 22 & 23 Car. II., c. 25, and many others relating to game, and provides that the right to kill game upon any land shall be vested in the owners of such land (mere occupiers for short terms excepted), or in any person who may have their grant or permission for the purpose. But it requires all persons killing or taking game to issue a yearly certificate, and all uncertificated persons selling it, a yearly license; and it contains penal provisions for the better preservation of game, and for the protection of land from unlawful trespasses in sporting.

As to the certificate, see 52 Geo. III., c. 93; 54 Geo. III., c. 141; 7 & 8 Geo. IV., c. 49; and 2 & 3 Vict., c. 35.

GAMING, the art or practice of playing and following up any game, particularly those of hazard, as cards, dice, eo-tables, &c.

The 32 Hen. VIII., c. 9, § 11, prohibits the keeping of any common house for dice, cards, or any unlawful games, under penalties of 40s. for every day of so keeping the house, and 6s. 8d. for every time of playing therein; and the 30 Geo. II., c. 24, § 14, inflicts punishment of the same kind, as well upon the master of any public house wherein labourers or servants are permitted to game, as upon the labourers and servants themselves. By 12 Geo. II., c. 28, 13 Geo. II., c. 19, and 18 Geo. II., c. 34, the games of faro, basset, ace of hearts, hazard, passage, roly-poly, and roulette, and all other games with dice, except backgammon, are prohibited under a penalty of 200*l.* for him that shall erect the same, and 50*l.* a time for the players. The 8 & 9 Vict., c. 109, repeals so much of the 32 Hen. VIII., c. 9, as prohibits bowling, tennis, or other games of mere skill. It also provides that the owner or keeper of any common gaming-house, and every person having the care or management thereof, and also every banker, croupier, and other person in any manner conducting the business of any common gaming-house, shall, on conviction by the oath of one witness, before two justices of the peace, be liable, in addition to the penalties of the act of Hen. VIII. to pay such penalty (not more than 100*l.*) as shall be adjudged by such justices, or, in their discretion, may be committed to the house of correction, with or without hard labour, for not more than six calendar months, with a proviso that nothing therein contained shall prevent any proceeding by indictment; but that, on the other hand, no person who shall be so summarily convicted, shall be liable to be proceeded against by indictment for the same offence. Also, that every person who shall have been concerned in any unlawful gaming, and who shall be examined as a witness before any justice of the peace, or

on the trial of any indictment or information against the owner, or keeper, or person having the care of any common gaming-house, touching such unlawful gaming, and who shall make true discovery thereof to the best of his knowledge, and receive from the court a certificate of his having done so, shall be freed from all criminal prosecutions, forfeitures, and disabilities for anything done in respect of such unlawful gaming. With respect to the game of billiards, in particular, it is provided that the justices of the peace, at the special sessions, called the general annual licensing meeting, may grant annual billiard licences to such persons as in their discretion they may deem fit to keep public billiard tables and bagatelle boards, or instruments used in any game of the like kind. Severe penalties are imposed on persons keeping such tables or boards without being duly licensed, or allowing play between one and eight o'clock in the morning, on any day or at any time on Sunday, Christmas Day, or Good Friday, or on any day of public fast or thanksgiving. Every person who shall, by fraud, or unlawful device, or ill practice in play, betting, or wagering at any game, win any sum of money or valuable thing, shall be deemed guilty of obtaining the same by a false pretence, and be punished accordingly; and all contracts, whether by parol or in writing, by way of gaming or wagering, shall be null and void; and no suit at law or in equity shall be brought to recover from a stakeholder a deposit on a wager, provided that such enactment shall not be deemed to apply to any subscription towards a plate or prize at any lawful game, sport, pastime, or exercise.

The 5 & 6 Wm. IV., c. 41 (amending 9 Ann., c. 14), enacts that all notes, bills, or mortgages given for money won at play, shall be deemed to be given on an illegal consideration, and are consequently void between the original parties, but they are not void in the hand of indorsees or purchasers for valuable consideration without notice.

Gaming was forbidden by the Roman laws, both during the times of the republic and under the emperors. *Cic. Philip. ii. 23; Cod. 3, tit. 43.* Hence Horace (*Carm. iii. 24*), alluding to the progress of effeminate and licentious manners, says, that boys of rank, instead of riding and hunting, now showed their skill in playing with the hoop, or even at games of chance, although they were illegal (*vetitis legibus alea*). Gaming was also condemned by public opinion. *In his gregibus*, says Cicero (*in Cat. ii. 10*), *omnes aleatores, omnes adulteri, omnes impuri impudicique versantur*. To detect and punish excesses of this description belonged to the office of the ædiles (*Martial, xiv. 1*).

Games of chance were, however, tolerated in the month of December at the Saturnalia, which was a period of general relaxation (*Martial iv. 14; Gellius xviii. 13*), and among the Greeks, as well as the Romans, old men were allowed to amuse themselves

in this manner. *Eurip. Med.* 67; *Cic. Senect.* 16; *Juv.* xiv. 4.

GANG-WEEK [*gangan*, Sax., to go], the time when the bounds of the parishes are lustrated or gone over by the parish-officers; rogation week. *Encyc. Lond.*

GANGIATORI, officers whose business it is to examine weights and measures. *Scotch Law.*

GANTELOPE [*gant*, Dut., all, and *lopen*, to run], a military punishment, in which the criminal running between the ranks receives a lash from each man. *Encyc. Lond.*

GAOL [*gaola*, Lat., *geole*, Fr., a cage for birds], a prison; a strong place for the confinement of offenders against the law.

There must be maintained one common gaol at the expence of every county of England and Wales; and at the expence of every county and division having a distinct commission of the peace, at least one house of correction.

Every prison (subject to a few exceptions to which the prison acts do not extend) must have a resident keeper, and resident matron to superintend the female prisoners, as also a visiting chaplain and surgeon, and to be visited three times a-year by two or more justices of the peace appointed at the quarter sessions for that purpose. These visitors are to make reports to every session, as to the state of the prison and prisoners within their jurisdiction, which are to be the basis of a general report from the quarter sessions, to be drawn up and transmitted annually by the chairman to a principal Secretary of State, and to be afterwards laid before both Houses of Parliament.

Besides the ordinary gaols and houses of correction in counties and boroughs, the following are particular, subject to separate and specific regulations, v. z., the Queen's Prison, the Milbank Prison, the Parkhurst Prison, and the Pentonville Prison. 3 *Step. Com.* 249.

GAOL DELIVERY, a commission to the Judges, &c., empowering them to try and deliver every prisoner who may be in gaol when they arrive at the circuit town, whenever or before whomsoever indicted, or for whatever crime committed. See *ASSISE*.

GAOLER, the master or keeper of a prison; one who has the custody of a place where prisoners are confined.

GARB, a bundle or sheaf of corn; a handful. *Fleta*, l. 2, c. 12.

GARBALES DECIMÆ, tithes of corn.

GARBLER OF SPICES, an ancient officer in the city of London, who may enter into any shop, warehouse, &c., to view and search drugs and spices, and garble and make clean the same, or see that it be done. 6 *Ann.*, c. 16.

GARCIO STOLÆ (groom of the stole).

GARCIONES, servants who follow a camp. *Wals.* 242.

GARD [*garde*, Fr.], wardship, care, custody.

GARDIA, custody. *Lib. Feud.*

GARLANDA, a chaplet, coronet, or garland.

GARNESTURA, victuals, arms, and other implements of war, necessary for the defence of a town or castle. *Mat. Par.* 1250.

GARNISH, money paid by a prisoner on his going to prison. Forbidden by 4 Geo. IV., c. 43, § 12, r. 23. Also, warning an heir; repealed by 6 Geo. IV., c. 105, § 13.

GARNISHEE, a person warned not to pay money which he owes to another person, which person is indebted to the person warning or giving notice.

GARNISHMENT, warning not to pay money, &c., to a defendant, but to appear and answer to a plaintiff creditor's suit. It usually arose in cases of detinue thus:—if a defendant allege that certain deeds were delivered to him by the plaintiff and another person upon condition, such defendant prays that the other person may be warned to plead with the plaintiff, as to whether the condition were performed or not, he the defendant being willing to deliver the property to the party entitled to it; thereupon a process of garnishment, monition, or notice issues, and all parties are brought before the court, that the cause may be thoroughly and justly determined. It is nearly allied to the proceedings in interpleader. 3 *Reenes' Hist. Eng. Law*, 448.

GARNISTURE, a furnishing or providing.

GARRANTY. See *GUARANTY*.

GARSON, a menial servant. *Toland*.

GARSUMMUNE, a fine or amerciamment.

GARTER [*gardus*, Wel., *jartier*, Fr., from *gar*, the binding of the knee], a string or ribband by which the stocking is held upon the leg; the mark of the highest order of knighthood, ranking next after the nobility.

This military order of knighthood is said to have been first instituted by Richard I. at the siege of Acre, where he caused twenty-six knights, who firmly stood by him, to wear thongs of blue leather about their legs. It is also understood to have been perfected by Edward III., and to have received some alterations, which were afterwards laid aside, from Edward VI. The badge of the order is the image of St. George, called the George, and the motto is, *Honi soit qui mal y pense*.

GARTH, a little backside; a close; a dam or war.

GASTALDUS, a temporary governor of the country. *Blount*.

GAUDIES, double commons.

GAUDY [*gaudium*], a feast, a festival, a day of plenty. *University Term*.

GAUGETUM, a gauge or guaging; a measure with respect to the contents of any vessel.

GAUGER, a surveying officer under the board of excise.

GAVEL. See *GABEL*.

GAVELCENTER [*sextarius vectigalis*, Lat.], a certain measure of rent-ale. See *OAKGAVEL*; *TOLCHESTER*.

GAVELET [*gaveletum*, Lat.], an ancient and special kind of cessavit, used in Kent and London for the recovery of rent. *Obsolete*.

GAVELGELD, payment of tribute or toll.

GAVELKIND [*gyfe-eal-kyn*, Sax., given to all the kindred], a customary tenure derived

from the Saxons, the chief characteristics of which are that the tenant can convey his land at fifteen years of age, and that the land descends to all the sons together as coparceners, and in default of them, to all the daughters together, and in default of lineal descendants, it descends to collaterals of the remotest degree in like manner. This was indeed the original canon of descent all over England, until the feudal law of primogeniture superseded it.

The special customs of this tenure are that a wife is dowable out of one half, instead of one-third, of the land; and that a husband will be tenant by the curtesy, whether there be issue born or not, but only of one half so long as he remains unmarried; that they are not liable to escheat for felony, although they are for treason or want of heirs. This tenure principally prevails in Kent, where success attended the struggles for the preservation of the ancient liberty of this kingdom, and it was preserved to the Kentish men by the Conqueror, in order to conciliate their favour and suppress the tumults which were threatening him on all sides immediately after the battle of Hastings. It is also met with in a modified form in copyhold property in several parts of the realm. *Rob. Cust. Gav.*

GAVELMAN, a tenant liable to tribute. *Blount.*

GAVELMED, the duty or work of mowing grass or cutting a meadow land, required of the lord from his customary tenants. *Somn.*

GAVELWERK, the personal labour of customary tenants.

GAZETTE [*gazetta*, a Venetian halfpenny, the price of a newspaper, of which the first was published at Venice], the official newspaper of the government, said to have been first published at Oxford in 1665, and on the removal of the Court to London, the title was changed to the London Gazette. It is published on Tuesdays and Fridays, and contains all the acts of state, and proclamations; also dissolutions of partnership, and bankruptcy and insolvency notices. It is evidence of such governmental proceedings as it contains. 5 T. R. 436.

GAZETTEER, an officer appointed to publish news by authority, whom Steele calls the lowest minister of state.

GEBURSCRIP, neighbourhood or adjoining district.

GEBURUS [*gebure*, Sax., a farmer], a country inhabitant of the same gebureship or village.

GELD, a mulct, compensation, value, price. *Angeld* is the single value of a thing; *twi-geld*, double value, &c.

GELDABLE, taxable.

GEMOT, a mote or moot, meeting, public assembly. The various kinds were—

1. The *folc-gemot*, or general assembly of the people, whether it was held in a city or town, or consisted of the whole shire. It was sometimes summoned by the ringing of the moot-bell. Its regular meetings were annual.

2. The *shire-gemot*, or county court, which met twice during the year.

3. The *burg-gemot*, which met thrice in the year.

4. The *hundred-gemot*, or hundred court, which met twelve times a year in the Saxon ages; but afterwards a full, perhaps an extraordinary meeting of every hundred was ordered to be held twice a year. This was the sheriff's tourn, or view of frank pledge.

5. The *Hulle-gemot*, or the court baron.

6. The *Wardemotus*. *Anc. Inst. Eng.*

GENEALOGY [*γενεα*, and *λογος*], history of the succession of families; enumeration of descent in order of succession; pedigree. *Encyc. Lond.*

GENEARCH [*γενεα* and *αρχος*], the head of a family.

GENEATH, a hind or farmer.

GENERAL AGENT, a person who is authorised by his principal to execute all deeds, sign all contracts, or purchase all goods required in a particular trade, business, or employment.

GENERAL COUNCIL, the assembly of the Parliament of the United Kingdom.

GENERAL DEMURRER, a pleading at common law, which excepts to sufficiency in general terms, without showing specifically the nature of the objection. It is resorted to usually when the objection is to matter of substance. *Step. Plead.* 152.

GENERAL GAOL DELIVERY. See **GAOL DELIVERY**.

GENERAL INCLOSURE ACT. The 41 Geo. III., c. 109, which consolidates a number of regulations as to the enclosure of common fields and waste lands.

GENERAL ISSUE, the plea of *nil debet* at common law, which shall not be allowed in any action, except penal actions under 21 Jac. I., c. 24. Even the general issue by statute is abolished by the 5 & 6 Vict., c. 97.

In criminal proceedings, the general issue is "not guilty," which is pleaded *viva voce* by the prisoner at the bar.

GENERAL LIEN, a right to detain a chattel, &c., until payment be made, not only for the particular article, but of any balance that may be due on general account in the same line of business. A general lien being against the ordinary rule of law, depends entirely upon contract, either express or implied, from the special usage of the particular trade, or the previous course of dealing between the parties.

GENERAL QUARTER SESSIONS OF THE PEACE, the courts of, tribunals held in every county, once in every quarter of a year, which, by 11 Geo. IV., and 1 Wm. IV., c. 70, § 85, is appointed to be in the first week after the 11th of October, the first week after the 28th of December, the first week after the 31st of March, and the first week after the 24th of June. When holden otherwise than quarterly, they are called "The General Sessions of the Peace." To prevent, however, the interference of the

spring assizes with the April quarter sessions, the justices of the Epiphany sessions may, if they see occasion, name two of their body to fix some day for holding the next general quarter sessions, not earlier than the 7th of March, nor later than the 22nd of April. 4 & 5 Wm. IV., c. 47. The 5 & 6 Vict., c. 38, defines the jurisdiction of justices in general and quarter sessions; and the 7 & 8 Vict., c. 71, provides for the general sessions of the peace in Middlesex.

GENERAL TAIL. See TAIL.

GENERAL VERDICT, the decision of the jury, when they find both the law and the fact.

GENERAL WARRANT, a process which used to issue from the state secretary's office, to take up (without naming any persons in particular) the author, printer, and publisher of such obscene and seditious libels as were particularly specified in it. It was declared illegal and void for uncertainty by a vote of the House of Commons. *Com. Jour.* 22nd April, 1766.

GENERALE, the usual commons in a religious house, distinguished from *pietantiæ*, which on extraordinary occasions were allowed beyond the commons.

Generale dictum generaliter est interpretandum. Generalia verba sunt generaliter intelligenda. 3 Inst. 76.—(A general saying is to be interpreted generally. General words are to be understood generally.)

Generale nihil certi implicat. 2 Co. 33.—(A general expression implies nothing certain.)

Generale tantum valet in generalibus quantum singulare in singulis. 11 Co. 59.—(What is general, prevails as much amongst things general as what is particular amongst things particular.)

Generalia præcedunt, specialia sequuntur. Reg. Br.—(Things general precede, things special follow.)

Generalia specialibus non derogant. Jenk. Cent. 120.—(Things general do not take from things special.)

Generalibus specialia derogant.—(Things special lessen things general.)

Generalia sunt præponenda singularibus.—(General are to be placed before particular things.)

Generalis clausula non porrigitur ad ea quæ antea specialiter sunt comprehensa. 8 Co. 154.—(A general clause does not extend to those things which are before specially provided.)

GENERALS OF ORDERS, chiefs of the several orders of monks, friars, and other religious societies.

GENERATIO, the issue or offspring of a mother monastery.

GENTLEMAN [*gentilhomme*, Fr., *gentiluomo*, Ital., i. e., *homo gentilis*, a man of ancestry]. All persons above yeomen: whereby noblemen are truly called gentlemen. *Smith de Rep. Ang.*, l. 1, cc. 20, 21. Consult the *Origin of Gentlemen*, from *Leyden's Complaint of Scotland*, repub. 1801.

GENTLEMAN-USHER, one who holds a

post at Court to usher others to the presence, &c.

GENTLEWOMAN, a woman of birth above the vulgar.

GERM, a generation.

GENUS, in logic, the first of the universal ideas, and is when the idea is so common that it extends to other ideas which are also universal: as incorporeal hereditament is *genus* with respect to a *rent*, which is *species*. *Genus summum* is that which holds the uppermost class in its predicament; or it is that which may be divided into several species, each whereof is a genus in respect to other species placed below. *Woolley's Introd. to Logic*, 45.

GEOPONICS [*γη*, Gk., and *πόνος*], the science of cultivating the ground; the doctrine of agriculture.

GEORGE-NOBLE, a gold coin of Hen. VIII., value 6s. 8d. *Leake*.

GEORGE, ST., *Knight of*. See GARTER.

GERMAN [*germain*, Fr., *germanus*, Lat.], brother; one approaching to a brother in proximity of blood: thus the children of brothers and sisters are called cousins-german.

GERONTO COMIUM [*γέρων*, Gk., an old man, and *κομῆν*, to take care of], an almshouse or hospital for old people. *Encyc. Lond.*

GERSUMARIUS, finable; liable to be amerced at the discretion of a lord of a manor.

GESTIO PRO HÆREDE (behaviour as heir), that conduct by which the heir renders himself liable to his ancestor's debts, as by taking possession of title-deeds, receiving rents, &c. *Scotch Law*.

GESTU ET FAMA, an ancient and obsolete writ, resorted to when a person's good behaviour was impeached.

GEWINEDA, the ancient convention of the people to decide a cause. *LL. Æthel.*, c. 1.

GEWITNESSA, the giving of evidence in our ancient British law. *Brompton*.

GIBBET [*gibet*, Fr.], a gallows; the post on which malefactors are hanged, or on which their carcasses are exposed. It differs from a common gallows, in that it consists of one perpendicular post, from the top of which proceeds one arm; except it be a double gibbet, which last is formed in the shape of the Roman capital T. *Encyc. Lond.*

GIFT, a common law voluntary conveyance, not founded on the consideration of money or blood. It is void as to creditors of the donor at the time of its being made (though valid as to subsequent creditors), and purchasers for valuable consideration, whether with or without notice of such gift. It is generally appropriated to the creation of an estate tail: hence the person creating an estate tail is denominated the donor, and the person taking it the donee: hence the issue of a tenant in tail is said to take *per formum doni*, and the writ formerly resorted to by him to recover his estate, was called a *formedon*. *Wuth. Conv.* 295.

A gift of personalty is void in the same manner as if it were a gratuitous gift of lands. It must be evidenced by a deed or by that of actual delivery of possession. 2 *Step. Com.* 102.

GIFTA AQUÆ, the stream of water to a mill.

GILBERT'S ACT, the 22 Geo. III., c. 83, which empowers parishes by consent of two-thirds part in number and value of the owners or occupiers, with the approbation of two justices of the peace, to appoint guardians to act in lieu of overseers, in all matters relative to the relief and management of the poor, and also to enter into voluntary unions with each other for the more convenient accommodation, maintenance, and employment of paupers.

GILD, a tax, tribute, or contribution; a society or fraternity constituted for mutual protection and benefit. Consult *Das Gildenwesen im Mittelalter* von Dr. W. E. Wilda.

GILDA MERCATORIA, a mercantile meeting or assembly.

GILDABLE, liable to pay a gild.

GILDMERCHANT, a merchant who has privilege to hold pleas of land among themselves. *Scott.*

GILDRENT, certain payment to the Crown from any gild or fraternity.

GISEMENT, cattle which are taken in to graze at a certain price; also the money received for grazing cattle.

GISETAKER, a person who takes cattle to graze.

GISLE, a pledge. *Fredgisle*, a pledge of peace. *Gislebert*, an illustrious pledge. *Gibs. Camden.*

GIST OF ACTION [*jaceo*], the cause for which an action lies; the ground and foundation of a suit, without which it is not maintainable.

GIVES, fetters or shackles for the feet.

GLADIOLUM, a little sword or dagger; also a kind of sedge.

GLADIUS, *jus gladii*, a supreme jurisdiction.

GLAIRE, a sword, lance, or horseman's staff; one of the weapons allowed in a trial by combat.

GLASS-MEN, wandering rogues or vagrants. 1 *Jac. I.*, c. 7.

GLAVEA, a hand dart.

GLEANING, LEASING, or LESING. It is decided that no right exists at common law, that the poor may enter on a person's ground and glean after harvest. *Steel v. Houghton*, 1 H. Bl. 51.

GLEBE, the land possessed as a part of the revenue of an ecclesiastical benefice. By § 5 of 5 & 6 Vict., c. 54, it is provided that the commissioners appointed to carry into effect the commutation of tithes shall have power to ascertain and define the boundaries of the glebe lands of any benefice, or, with consent of the ordinary and patron, to exchange the glebe lands for other lands within the same or any adjoining parish, or otherwise conveniently situated.

GLEBÆ ASCRIPTITII, villein-socmen, who

could not be removed from the land while they did the service due. 1 *Step. Com.* 175.

GLEBARIÆ, turfs dug out of the ground.

GLISCYWA, a fraternity.

GLOMERELLS, commissioners appointed to determine differences between scholars in a school or university, and the townsmen of the place.

Glossa viperina est quæ corrodit viscera textus. 11 Co. 34.—(It is a poisonous gloss which corrupts the bowels of the text.)

GLOVE SILVER, extraordinary rewards given to officers of courts, &c.; money given by a sheriff of a county in which no offenders are left for execution to the clerk of assize and Judges' officers.

GLOVES. It is an ancient custom on a maiden assize, when there is no offender to be tried, for the sheriff to present the Judge with a pair of white gloves.

GLYN [*glyn*. Erse, *gleen*, Scot.], a hollow between two mountains.

GOD BOTE, an ecclesiastical or church fine paid for crimes and offences committed against God.

GOD-GILD, that which is offered to God or his service.

GOD-PENNY, earnest money given to a servant when hired.

GOLDA, a mine.

GOLD-MINES, a branch of the ordinary revenue of the kingdom. By 1 W. & M., st. 1, c. 30, and 5 W. & M., c. 6, it is enacted, that no mines of copper, tin, iron, or lead shall be looked upon as royal mines, notwithstanding gold or silver may be extracted from them in any quantities; but that the King or persons claiming royal mines under his authority, may have the ore (other than tin ore in the counties of Devon and Cornwall), paying for the same a price stated in the act.

GOLDSMITHS' NOTES, bankers' notes; originally so called, because the bankers of London were originally goldsmiths also.

GOLDWIT, or **GOLDWICH**, a golden mulct.

GOLIARDUS, a jester or buffoon. *Mat. Par.* 1229.

GOOD ABEARING. See **ABEARANCE**.

GOOD BEHAVIOUR. See **ABEARANCE**.

GOOD CONSIDERATION, one founded on motives of generosity, prudence, and natural duty; such as natural love and affection.

GOODWILL, the custom of any trade or business.

GOODS and CHATTELS, the generic denomination of things personal, as distinguished from things real, or lands, tenements and hereditaments.

GOOLE, a breach in a seawall or bank; a passage worn by the flux and reflux of the sea.

GORCE, or **GORS**, a wear, pool, or pit of water. *Terms de Ley.*

GORE, a narrow slip of land.

GOSSIPRED, compaternity, spiritual affinity. *Canon Law.*

GOTE, a ditch, sluice, or gutter.

GOVERNMENT, that form of fundamental

rules and principles by which a nation or state is governed. *Locke on Government; Paley's Polit. Phi; Smith's Wealth of Nations; Montesquieu's Spirit of Laws.*

GOVERNMENT ANNUITY SOCIETIES, formed by 3 & 4 Wm. IV., c. 14. Their purpose is to enable persons, among the industrious classes, to make provisions for themselves by purchasing, on advantageous terms, a government annuity for life or term of years. Societies regularly constituted under this act, are empowered to be the medium for such contracts, in favour of any persons whom they deem to be the proper objects for the intended benefit. The trustees or managers of the society are to act as the agents of the commissioners for reduction of the national debt in this transaction, and the expence of the party purchasing (who is relieved from all stamp duties) is limited to a very trivial amount. The annuity is charged on the consolidated fund, and made payable half yearly upon the draft of the trustees, supported (in the case of life annuity) by proof of the existence and identity of the nominee. It may either be immediate or deferred, so as to commence at any future period to be named by the purchaser. If deferred, it may be purchased either by a single sum paid in the first instance, or by annual payments; and, supposing the purchaser to live to the period of its commencement, he becomes entitled to an annuity equivalent to the value of all his payments, with the accumulation of compound interest. If, on the other hand, in the case of a deferred life annuity, he dies before its commencement, or (having agreed to pay by annual instalments) becomes incapable before that time of continuing the payments, the whole money that has been actually paid is returned, exclusive of interest, to his representatives or to himself, as the case may be. In the case of a life annuity, whether immediate or deferred, that has come into possession, this advantage is also given to a purchaser—that on the death of the person on whose life the annuity depended, the purchaser or his representatives become entitled, over and above the arrears, to a sum equal to one-fourth of the annuity, provided it be claimed within two years after the decease. All annuities under this act are declared to be personal estate, are exempt from taxes and other charges, and are incapable of being sold or assessed, so as to pass the interest of the party entitled during his lifetime, unless in the case of his bankruptcy or insolvency, but where that happens, they are to be re-purchased by government at a valuation, and the value paid over for the benefit of the creditors. The annual amount of annuity to be granted to any one person is not to be less than 4*l.*, nor more than 30*l.*, and no purchase can be made for the life of a person under the age of fifteen. Any inhabitants of a parish, forming themselves into a society for the purposes contemplated by the act, are

entitled to claim its benefits, provided that the rector, vicar, or minister of the parish for the time being, or a resident justice of the peace, be one of the trustees, and provided that there be no savings bank legally established in the parish, under 9 Geo. IV., c. 92. But if there be a savings bank there of that description, a separate society for the purpose is unnecessary, and not authorised by the act; for in that case, any two of the trustees or managers of the savings bank may contract for government annuities, in favour of any person to whom they may think proper to extend the benefit, and who is either a depositor in the savings bank, or entitled in their opinion to become a depositor therein. Through whichever of these media annuities are purchased, all transactions relative to them are to be subject in either case (as far as possible) to the regulations made by 9 Geo. IV., c. 92, and 7 & 8 Vict., c. 83, as to savings banks. 3 *Step. Com.* 237.

GOVERNMENT, offences against. They are treason; misprision of treason; discharging fire arms or missiles, &c., at the Queen; scandal against the sovereign; præmunire; contempts against the title of the sovereign; contempts against the royal palaces; mal-administration in high offices; selling public offices; offences relating to the coin; embezzling or destroying royal stores or ships of war; serving foreign states; desertion or seducing to desert; refusing or neglecting the oaths; administering unlawful oaths, or being engaged in illegal societies; and contempts against the prerogative. 4 *Step. Com.* 183—230.

GRACE, a faculty, license, or dispensation; also general and free pardon by act of Parliament.

GRACE, days of, time of indulgence and respite granted to an acceptor for the payment of his bill of exchange. It was originally a gratuitous favour (hence the name) but custom has rendered it a legal right.

The number of these days varies according to the ancient custom or express law prevailing in each particular country, as follows:—

	DAYS
<i>Altona.</i> Sundays and holydays included, and bills falling due on a Sunday or holyday, must be paid, or in default thereof, protested on the day previous	12
<i>America</i>	3
<i>Amsterdam.</i> Abolished since the Code Napoleon	none
<i>Antwerp.</i> The same	none
<i>Berlin.</i> When bills, including them, do not fall due on a Sunday or holyday, in which case they must be paid or protested the day previous	3
<i>Brazil, Rio Janeiro, Bahia,</i> including Sundays, &c., as in the last case	15
<i>England, Scotland, Wales, and Ireland</i>	3
<i>France.</i> Abolished by the Code Napoleon, <i>Livre 1, tit. 8, § 5, pl. 135; 1 Pardessus, 189.</i> Ten days were formerly allowed, <i>Pothier, pl. 14, 15</i>	none

Frankfort on the Main. Except on bills drawn at sight, Sundays and holydays not included..... 4

Genoa. Abolished by the Code Napoleon none

Hamburg. Same as Altona 12

Leghorn none

Lisbon and Oporto, 15 days on local, and 6 on foreign bills; but, if not previously accepted, must be paid on the day they fall due 6 or 15

Palermo none

Petersburg. Bills drawn after date are entitled to 10 days' grace; those drawn at sight, to only 3 days; and those at any number of days after sight, none whatever. But bills received and presented after they are due, are, nevertheless, entitled to 10 days' grace. In these days of grace are included Sundays and holydays, as also the day when the bill falls due, on which days they cannot be protested for non-payment; but, on the morning of the last day of grace, payment must be demanded, and, if not complied with, the bill must be protested before sunset, 10 3, &c.

Rotterdam. Abolished by the Code Napoleon none

Spain. Vary in different parts of Spain, generally 14 days on foreign, and 8 on inland bills; at *Cadiz* only six days' grace. When bills are drawn at a certain date, fixed or precise, no days of grace are allowed. Bills drawn at sight are not entitled to any days of grace; nor are any bills, unless accepted prior to their maturity 14 but vary

Trieste. Three days on bills drawn after date, or any term after sight, not less than 7 days, or payable on a particular day; but bills presented after maturity, must be paid within twenty-four hours. Sundays and holydays are included in the days of grace, and if the last day of grace fall on such a day, payment must be made, or the bill protested on the first following open day 3

Venice. Six days, in which Sundays, holydays, and the days when the bank is shut, are not included 6

Vienna. Same as Trieste 3

Chitty on Bills, c. 9, p. 407, 8th edit.

The law of the place where the bill is payable, governs the allowance or non-allowance of the days of grace. They are to be calculated exclusive of the day when the bill would otherwise become due. They are counted consecutively and in direct succession, without any deduction or allowance, on account of there being any Sundays or holydays or other non-secular days intermediate between the first and the last; and whenever the last day of grace occurs on a Sunday or other holyday, the bill becomes due and payable, not on the succeeding, but on the preceding day. In England, days of grace are allowed on all bills, whether they

are payable at a certain time after date, or after sight, or even at sight. But bills payable on demand, are immediately payable upon presentment, without any grace days; and so are bills not expressing the time of payment; for then, in legal contemplation, they are payable on demand. *Story on Bills, 385.*

GRADIENT, moving by steps; the deviation of railways from a level surface to an inclined plane.

GRADUATES, scholars who have taken degrees in an university.

GRAFFER, a notary, or scrivener.

GRAFFIO GRAVIO, a land grave, or earl.

GRAFFIUM, a writing book, register, or cartulary of deeds and evidences.

GRAIL, a gradual or book containing some of the offices of the Romish Church.

GRAINAGE, an ancient duty in London of the twentieth part of salt imported by aliens.

Grammatica falsa non vitiat chartam. 9 Co. 48.—(False Grammar vitiates not a deed.)

GRANATARIUS, an officer who kept the corn chamber in a religious house.

GRAND ASSISE, a peculiar species of trial by jury introduced in the time of Henry II., giving the tenant or defendant in a writ of right the alternative of a trial by battel, or by his peers. Abolished by 3 & 4 Wm. IV., c. 42, § 13.

GRAND CAPE. See **CAPE.**

GRAND COUSTUMIER OF NORMANDY, an ancient book of great authority containing the ducal customs of Normandy. *Hale's Hist. Com. Law, c. 6.*

GRAND DAYS, those days in the terms, which are solemnly kept in the Inns of Court and Chancery, i. e., Candlemas Day in Hilary; Ascension Day in Easter; St. John Baptist's Day in Trinity; and All Saints' Day in Michaelmas; which are *dies non juridici.*

GRAND DISTRESS, writ of, issued in the real action of *quare impedit*, when no appearance has been entered after the attachment; it commands the sheriff to distrain the defendant's lands and chattels in order to compel appearance. 3 *Step Com.* 662.

GRAND JURY, an inquisition composed of not less than twelve nor more than twenty-three good and lawful men of a county, returned by the sheriff to every session of the peace, and every commission of oyer and terminer and of general gaol delivery, who enquire, present, do and execute all those things which on the part of our lady the Queen, shall then and there be commanded them. Grand juryinen ought to be freeholders, but to what extent is uncertain.

The grand jury are previously instructed in the articles of their enquiry, by a charge from the Judge who presides upon the bench. They then withdraw to sit, and receive indictments which are preferred to them in the name of the Queen, but at the suit of any private prosecutor, and they are only to hear evidence on the part of the prosecution: for the finding of an indictment

is only in the nature of an enquiry or accusation, which is afterwards to be tried and determined; and the grand jury are only to enquire upon their oaths whether there be sufficient cause to call upon the party accused to answer it.

When the grand jury have heard the evidence, if they think it a groundless accusation, they endorse upon the bill of indictment, "not a true bill" or "not found;" the bill is then thrown out, and the party accused discharged without further answer. But a fresh bill may afterwards be preferred to a subsequent grand jury. If, however, they are satisfied of the truth of the accusation, they then endorse "a true bill;" the indictment is then said to be found, and the party stands indicted. A majority of the grand jury must agree, *i. e.*, not less than twelve. 4 *Step. Com.* 369.

GRAND LARCENY, stealing to above the value of twelve pence. Abolished by 7 & 8 *Geo. IV.*, c. 29, § 2.

GRAND SERJEANTY, an ancient holding by military service. See **TENURE**.

GRANGE, a farm furnished with every thing necessary for husbandry.

GRANGIARIUS, a keeper of a grange or farm.

GRANT [*garantir*, Fr., Junius and Skinner; but Minshew thinks *gratuito*, or perhaps *gratia*, *gratificor*, Lat.], a common law conveyance, operating by transmutation of possession, though when conveying uses, strictly passing a statutory seisin only, because the deed is generally appropriated to the transfer of things not in possession, as reversions, remainders, and incorporeal hereditaments, of which livery of seisin cannot be given. A grant was, therefore, said to be a conveyance in writing of property, which could not pass by actual delivery of seisin.

The term "*grant*" is generally applied to conveyances by feoffment, fine, recovery, lease and release, bargain and sale, and covenant to stand seised. But the simple grant at common law is complete without any of the ceremonies peculiar to the above conveyances. It does not require enrolment, nor a prior lease for years, nor the consideration necessary to establish a covenant to stand seised to uses. Livery of seisin is altogether inapplicable to it, and it is not matter of record. The operative word is "*grant*," which is not to imply any covenant in law, except so far as it may by force of any act of Parliament imply a covenant. 8 & 9 *Vict.*, c. 106, § 4; *Sanders' Uses and Trusts*, vol. ii., p. 29.

A grant of personalty is more properly termed an assignment or a bill of sale.

The Queen's grants are matters of record, and are either letters patent or writs close.

GRANTEE, he to whom any grant is made.

GRANTOR, he by whom a grant is made.

GRANTZ, grantees.

GRASS-HEARTH, the feudal service of turning up the earth with a plough.

GRASS-WEEK, rogation week, so called in the Inns of Court and Chancery.

GRATUITOUS DEEDS, instruments made without binding or equivalent considerations.

GRAVA, a little wood or grove.

GRAVARE ET GRAVATIO, an accusation or impeachment. *Leg. Ethel.*, c. 19.

Gravius est divinam quam temporalem lædere majestatem. 11 Co. 29.—(It is more serious to hurt divine than temporal majesty.)

GREAT BEDFORD LEVEL, a tract of fenny land, about 300,000 acres, in the counties of Norfolk, Suffolk, Cambridge, Huntingdon, Northampton, and Lincoln. After various unsuccessful attempts to drain these fens, William, Earl of Bedford, in 1649, undertook and completed it; and a corporation was established for the government of this great level. Cutting down or destroying any of the works, &c., is felony 15 *Car. II.*, c. 17, § 13.

GREAT CHARTER, *Magna Charta*.

GREAT SEAL. By Art. 34 of the Union between England and Scotland (5 *Ann.*, c. 8), it is provided that there should be one Great Seal for the United Kingdom of Great Britain, which should be used for sealing writs to summon the Parliament, and for sealing all treaties with foreign states, and all public acts of state which concern the United Kingdom, and in all other matters relating to England, as the Great Seal of England was then used; and that a seal in Scotland should be kept and made use of in all things relating to private rights or grants, which had usually passed the Great Seal of Scotland, and which only concern offices, grants, commissions, and private rights within Scotland. On the union between Great Britain and Ireland no express provision was made by any article of that union as to the establishing one Great Seal for the United Kingdom; but various acts as to the summoning Parliament, &c., are required to be done under the Great Seal of the United Kingdom, and others under the Great Seal of Ireland; and by § 3 of the Acts of Union. 39 & 40 *Geo. III.*, c. 67 (*British*), and 40 *Geo. III.*, c. 38 (*Irish*), it is enacted that the Great Seal of Ireland may, if his Majesty shall so think fit, after the union, be used in like manner as before the union (except where it is otherwise provided by the articles of union), within that part of the United Kingdom called Ireland. As to forging these seals, see **FORGERY**.

GREAT TITHES, the tithes of corn, hay, and wood.

GREE, satisfaction for an offence committed or injury done.

GREEN-CLOTH, a board or court of justice, held in the counting-house of the British Monarch's household, and composed of the Lord Steward and inferior officers. To this court is committed the charge and supervision of the royal household in matters of justice and government, with power to correct all offenders, and to maintain the peace of the verge or jurisdiction of the court-royal, which extends every way two hundred

yards from the gate of the palace. Without a warrant first obtained from this court, no servant of the household can be arrested for debt. It takes its name from a green cloth spread over the board at which it is held.

GREENHEW, or **GREENHUE**, vert in forests, &c. *Manw. p. 2, c. 6, n. 5.*

GREEN SILVER, a feudal custom in the manor of Writtel in Essex, where every tenant whose front door opens to Greenbury shall pay a halfpenny yearly to the lord, by the name of green silver or rent.

GREENWAX, estreats delivered to a sheriff out of the Exchequer, under the seal of the court, which is impressed upon green wax, to be levied. *7 Hen. IV., c. 3.*

GREGORIAN CODE. See **CODEX GREGORIANUS**.

GREGORIAN EPOCH, the time from which the Gregorian calendar or computation dates, *i. e.*, from the year 1582.

GREVE [*gersfa*, or, rather, *rewe*, Sax.], power; authority.

GRITH, peace, protection.

GRITHBRECHE, breach of the peace.

GRITHSTOLE, a place of sanctuary.

GRONNA, a deep pit or bituminous place where turfs are dug to burn.

GROOM PORTER, an officer belonging to the royal household.

GROOM OF THE STOLE, an officer of the royal household, whose precinct is properly the royal bedchamber. *Lex Constitu. 182.*

GROSS, absolute, entire; not depending on another.

GROSS WEIGHT, the whole weight of goods and merchandise, dust and dross mixed with them, and also the chest or bag, &c., out of which tare and trett are allowed.

GROSSE BOIS, timber.

GROUND ANNUAL, a ground rent payable before a tenement in a burgh is built; contradistinguished from *feu annual*.

GROUND RENT, a periodical payment for the privilege of building on another's land.

GROUNDAGE, a custom or tribute paid for the standing of a ship in a port.

GROWTH HALFPENNY, a rate paid in some places for the tithe of every fat beast, ox, or other unfruitful cattle. *Clay Rep. 92.*

GRUARI, the principal officers of a forest.

GUARANTY, an engagement to be responsible for the debts or duties of a third person, in the event of his failure to fulfil his engagement. It requires both a proposal and an acceptance thereof. It is treated as a mercantile instrument, and is to be construed so as to give effect to whatever is fairly presumable to be the intention and understanding of the parties thereto, and not according to any strictly technical nicety. There must be a consideration, but a trifling consideration is sufficient, though it must be executory, either wholly or in part; and it must be in respect of a new debt or a future act. Where the original debt and guaranty are contemporaneous, no other consideration is necessary than that which moves between the creditor and the original debtor; but if

a guaranty be made in respect of a debt already incurred, there must be a new consideration to support it, but the consideration need not move directly between the person giving and the person receiving the guaranty. It is sufficient if the person for whom it is given receive a benefit, or if the person for whom it is given receive, or may receive a detriment. A consideration needs not be expressed, for if it can be fairly implied from the language used, it will ordinarily be sufficient. A promise of indemnity or guaranty, is sometimes implied from the relation of the parties, thus, a landlord is presumed to promise to his tenant that rent shall not be exacted from him by any other person than himself. The Statute of Frauds enacts that "no action shall be brought whereby to charge the defendant upon any special promise to answer for the debt, default, or mis-carriage of another person, unless the agreement upon which such action shall be brought, or some memorandum or note thereof shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorised." This statute applies only to collateral engagements, that is, to engagements upon which the guarantor is only conditionally liable, upon the default of some other person, who is solely liable originally. If the guarantor be in any manner a party to the original promise, and liable co-extensively with the other party in the first instance, and not upon his default alone, the statute does not apply. No memorandum is within the statute, unless the consideration, as well as the promise, be stated.

A surety or guarantor who has paid the debt of his principal, is entitled to a reimbursement therefor, and may bring an action of *indebitatus assumpsit*, unless he have taken a bond of indemnity, in which case he must sue upon his bond. *Story on Contracts, chap. v.*

GUARDAGE, state of wardship.

GUARDIAN, a person who has the charge or custody of legitimate infants, or wards, no others being the subjects of tutelage at common law. The different species of guardianship recognised in the law of England are the following:—

(a) *Guardianship by nature*. That which belongs to the ancestor in respect of his heir apparent, male or female. It is not uncommon to apply the term of natural guardian to the father or mother as such, and in reference to all their children; but it is rather a popular than a technical mode of expression, the parent being designated by law as guardian *for nurture*, when his right to the person of a child, who is not his heir apparent, is intended. In this guardianship by nature, the father has the first claim; and even on his decease, the claim of the mother or other ancestor will be superseded, if he have appointed a guardian under the 12 Car. II., c. 24.

(b) *Guardianship for nurture*. This ap-

plies to all the children. It belongs exclusively to the father, or, at his decease, to the mother. It continues until majority.

(7) *Guardianship in socage.* This occurs only where the legal estate in lands or other hereditaments held in socage, descends upon a minor; in which case, the guardianship of his person and of his property, so far at least as regards the tenements in socage, devolves, by the common law, upon his next of blood, to whom the inheritance cannot possibly descend. It continues until the minor is fourteen years of age, except in gavelkind, when the office lasts one year longer.

(8) *Guardianship by statute.* The 12 Car. II., c. 24, enacts, that in all cases, except those which fall within the custom of London or other cities or corporate towns, a father may, by deed or will, executed in the presence of two witnesses, dispose of the custody of all his children born or to be born, that should be unmarried at his decease, or be born afterwards; he may appoint as guardian any person except a Popish recusant; he may appoint the guardianship to last until twenty-one, or for any less time; the appointment may be either in possession or remainder; it shall be effectual against all persons claiming as guardians in socage or otherwise; and the guardian so appointed shall have the custody of the infant's person and of all his estate, both real and personal. The statute makes no mention of the mother, who is consequently not within the benefit of its enactments; nor does it extend to illegitimate children, but where a father has by will named a guardian for any natural child, the Court of Chancery will generally appoint that person.

(c) *Guardianship by election.* An infant having lands in socage, may, after fourteen, when the guardianship in socage terminates, elect a guardian for himself, if there be no other then ready to take charge of him and his property. This is of infrequent occurrence, because such an election would not supersede the authority of the Court of Chancery.

(f) *Guardianship by appointment of the Lord Chancellor.* The Court of Chancery is held to possess a general jurisdiction with respect to the custody of infants, derived, as is supposed, from the prerogative of the Crown, which, as *parens patriæ* interposes its protection in favour of those who are not of capacity to maintain their own rights. By the institution of a suit in Chancery, in relation to the infant's estate, such infant becomes a ward of the Court; which will in that case take the direction of his estate, and appoint a guardian for his person only. An infant not possessed of property cannot be made a ward of Court, nor will the Court, generally, appoint a guardian for an infant so circumstanced, except under the Marriage Act, 4 Geo. IV., c. 76, § 16; it has authority to appoint one, for the purpose of

consenting to the marriage of any infant, having no father or unmarried mother or other guardian; and, in certain cases, to give its judicial sanction to the marriage, where the consent of the father, mother, or guardian cannot be obtained; and under 3 & 4 Vict., c. 90, the Court is empowered to take away infants convicted of felony out of the control of their parents or other guardians (if it shall appear expedient), and to assign the custody of them to such other persons as may be willing to be entrusted with their charge.

(7) *Guardianship ad litem.* An infant cannot prosecute an action at common law, either in person or by attorney. He must sue either by *prochein amy*, or by guardian, usually the former, and defend by guardian only. The *prochein amy* or guardian, so appearing in the record, is *prima facie* liable to the costs. *Chit Arch. Prac.* 889. Infants in equity sue by *prochein amy*, but must defend by guardian. The *prochein amy* is liable to the costs of suit, which makes it important to the defendant that the party should be of sufficient substance; and if not, the Court will compel him to give security for costs.

(8) *Guardianship by custom.* This obtains in copyholds and certain cities and boroughs.

(i) *Guardianship by appointment of the Ecclesiastical Court.* It appoints a guardian *ad litem*, and also claims the right of appointment as to personal estate, and for the person also, if there be no guardian appointed. The spiritual court distinguishes between an infant and a minor. An infant is so called, if under seven years of age: a minor from seven to twenty-one. *2 Step. Com.* 331.

"The rule of the Court," remarked Lord Hardwicke (*Hylton v. Hylton*, 2 Ves. 548), "as to guardians, is extremely strict, and in some cases does infer some hardship; as, where there has been a great deal of trouble, and he has acted fairly and honestly, that yet he shall have no allowance. But the Court has established that on great utility and on necessity; and on this principle of humanity, that it is a debt of humanity that one man owes to another, as every man is liable to be in the same circumstances."

By the Roman law, guardianship was of two sorts (1) *Tutela*, and (2) *Cura*: the first lasted in males until they arrived at fourteen years of age, and in females until they arrived at twelve years of age, which was called the age of puberty of the sexes respectively. From the time of puberty until they were twenty-five years of age, which was their full majority, they were deemed minors, and subject to curatorship. During the first period of tutelage, their guardian was called tutor, and they were called pupils; during the second period, their guardian was called curator, and they were called minors. In England, the guardian performs the offices both of a tutor and a curator, under the Roman law. In France, the tutorship lasts until the full age of majority.

In treating of guardianship, two questions

naturally arise: (1) Whether the authority of a guardian over the person of his ward is local, and confined to the place of his domicile, or extends everywhere? (2) Whether the authority of the guardian over the property of his ward is local, or extends everywhere? The better opinion seems to answer, that the guardian's authority extends everywhere, in both cases. *Story's Conf. of Laws, chap. xiii.*

GUARDIAN or WARDEN OF THE CINQUE PORTS, a magistrate who has the jurisdiction of the ports or havens, which are called the *cinque ports*. This office was first created among us, in imitation of the Roman policy, to strengthen the sea coasts against enemies, &c. *Camb. Br.* 238.

GUARDIAN DE L'EGLISE, a churchwarden. **GUARDIAN DE L'ESTEMARY**, the warden of the stannaries or mines in Cornwall, &c.

GUARDIAN OF THE PEACE, a warden or conservator of the peace.

GUARDIAN OF THE POOR. By 22 Geo. III., c. 83 (commonly called Gilbert's Act), parishes are authorized, by consent of two-third parts in number and value of the owners and occupiers, with the approbation of two justices of the peace, to appoint guardians to act in lieu of overseers, in all matters relative to the relief and management of the poor. As to their appointment under the Poor Law Amendment Act, see 4 & 5 Wm. IV., c. 76. Guardians have, by 7 & 8 Vict., c. 101, § 31, the power of directing a pauper to be buried at the expense of the parish.

GUARDIAN OF THE SPIRITUALITIES, the person to whom the spiritual jurisdiction of any diocese is committed during the vacancy of the see.

GUARDIAN OF THE TEMPORALITIES, the person to whose custody a vacant see or abbey was committed by the Crown.

GUASTALD, one who has the custody of the royal mansions.

GUEST-TAKER, an agistor; one who took cattle into feed in the royal forests.

GUIDAGE, a reward for safe conduct through a strange land or unknown country.

GUILD [*gildan*, Sax.], a company, fraternity, or corporation, associated for some commercial purpose.

GUILDHALL, the chief hall of a city, &c., for holding courts, and for the meeting of the corporation in order to make laws for the regulation of the city, and to administer summary justice.

GUILDRENTS. See **GILDRENT**.

GULES OF AUGUST [*gula*, Lat., a throat], the entrance into, or the first day of that month.

GULTWIT, or **GUILTWIT**, an amends for trespass.

GURGITES, wears.

GUTI and **GOTTI**, Goths, Jutæ or Getæ, who left Germany and came to inhabit this island.

GWABR MÉRCHED, a payment or fine made to the lords of some manors, upon the marriage of their tenants' daughters, or

otherwise on their committing incontinency.

See **MERCHETA MULIERUM**. *Welch Term.*

GWALSTOW, a place of execution.

GWAYF, that which had been stolen and afterwards dropped in the highway for fear of a discovery.

GYLPUT, the name of a court held every three weeks in the liberty or hundred of Pathbaw in Warwick.

GYLTWITE. See **GULTWIT**.

GYNARCY, or **GYNÆOCRACY**, government by a woman; a state where women are legally capable of the supreme command. Such are Great Britain and Spain.

H

HABEAS CORPORA JURATORUM (that you have the bodies of the jurors), a process issuing out of the Court of Common Pleas, commanding the sheriff to summon a jury. The practice is similar to the *distringas* from the Queen's Bench and Exchequer for the same purpose. See **DISTRINGAS JURATORES**.

HABEAS CORPUS ACT, the 31 Car. II., c. 2, providing the great remedy for the violation of personal liberty by the writ of *habeas corpus ad subjiciendum*: which see below.

HABEAS CORPUS AD FACIENDUM ET RECIPIENDUM (that you have the body to do and receive), a common law writ which issues out of any of the courts at Westminster, when a person is sued in some inferior jurisdiction, and is desirous to remove the action into the superior court. It commands the inferior Judges to produce the body of the defendant, together with the day and cause of his caption and detainer, to do and receive whatever the Queen's Court shall consider in that behalf. *3 Bl. Com.* 130.

HABEAS CORPUS AD PROSEQUENDUM (that you have the body to prosecute), a writ that issues when it is necessary to remove a prisoner, in order that he may be tried in the proper jurisdiction. *Ibid.*

HABEAS CORPUS AD RESPONDENDUM (that you have the body to answer), a writ that issues when one has a cause of action against another, who is confined by the process of some inferior court, in order to remove the prisoner, and charge him with the new cause of action in the court above. *Ibid.*

HABEAS CORPUS AD SATISFACIENDUM (that you have the body to satisfy), when a prisoner has had judgment against himself in an action, and the plaintiff is desirous to bring him up to some superior court to charge him with the process of execution. *Ibid.*

HABEAS CORPUS AD SUBJICIENDUM (that you have the body to answer), the most celebrated prerogative writ contained in the English law, and is addressed to any person who detains another in custody, and commands him to produce the body of the prisoner, with the day and cause of his caption and

detention, and to do, submit to, and receive whatever the Judge or court awarding such writ shall consider in that behalf. It issues out of any of the superior courts of law and equity, both in term and vacation, and runs into all parts of the Queen's dominions. The writ is applied for either by motion to a court or application to a Judge, supported by an affidavit of the facts. If a probable ground be shown that the party is imprisoned without just cause, and therefore has a right to be delivered, then this writ ought of right to be granted to every man that is committed or detained in prison or otherwise restrained, though it be by command of the Sovereign, the Privy Council, or any other power in the country. And therefore there is an absolute necessity of expressing upon every commitment the reason for which it is made, that a court upon a *habeas corpus* may examine into its validity, and, according to the circumstances of the case, may discharge, admit to bail, or remand the prisoner.

The *Habeas Corpus* Act enacts, 1, that on complaint and request in writing, by or on behalf of any person committed and charged with any crime (unless committed for treason or felony expressed in the warrant; or as accessory, or on suspicion of being accessory before the fact, to any petit-treason or felony, or upon suspicion of such petit-treason or felony, plainly expressed in the warrant; or unless he is committed or charged in execution by legal process), the Lord Chancellor or any of the Judges in vacation upon viewing a copy of the warrant or affidavit that a copy is denied, shall (unless the party has neglected, for two terms, to apply to any Court for his enlargement) award a *habeas corpus* for such prisoner, returnable immediately, before himself or any other of the Judges; and upon the return made shall discharge the party, if bailable, upon giving security to appear and answer to the accusation in the proper court of judicature. 2. That such writs shall be endorsed, as granted in pursuance of this act, and signed by the party awarding them. 3. That the writ shall be returned and the prisoner brought up within a limited time, according to the distance, not exceeding in any case twenty days. 4. That officers and keepers neglecting to make due returns, or not delivering to the prisoner or his agent, within six hours after demand, a copy of the warrant of commitment, on shifting the custody of a prisoner from one to another, without sufficient reason or authority (specified in the act), shall for the first offence forfeit 100*l.*, and for the second offence 200*l.* to the party grieved, and be disabled to hold his office. 5. That no person once delivered by *habeas corpus* shall be recommitted for the same offence, on penalty of 500*l.* 6. That every person committed for treason or felony shall, if he require it, the first week of the next term, or the first day of the next session of *oyer and terminer*, be indicted in

that term or session, or else admitted to bail; unless the witnesses for the Crown cannot be produced at that time; and if acquitted, or if not indicted and tried in the second term or session, he shall be discharged from imprisonment for such imputed offence; but that no person, after the assizes shall be open for the county in which he is detained, shall be removed by *habeas corpus*, till after the assizes are ended; but shall be left to the justice of the Judges of assize. 7. That any prisoner may move for and obtain his *habeas corpus* as well out of the Chancery and Exchequer as out of the Queen's Bench or Common Pleas, and the Lord Chancellor or Judges denying the same, on sight of the warrant, or oath that the same is refused, shall forfeit severally to the party grieved, the sum of 500*l.* 8. That this writ of *habeas corpus* shall run into the counties, palatines, cinque ports, and other privileged places, and the islands of Jersey, and Guernsey. 9. That no inhabitant of England (except persons contracting or convicts praying to be transported, or having committed some capital offence in the place to which they are sent) shall be sent prisoner to Scotland, Ireland, Jersey, Guernsey, or any place beyond the seas, within or without the King's dominions, on pain that the party committing, his advisers, aiders, and assistants, shall forfeit to the party grieved, a sum not less than 500*l.*; shall be disabled to bear any office of trust or profit; shall incur the penalties of *præmunire*; and shall be incapable of the royal pardon.

This statute extends only to the case of commitments, for such criminal charges as can produce no inconvenience to public justice by a temporary enlargement of the prisoner; all other cases of unjust imprisonment being left to the *habeas corpus* at common law, now regulated by 56 Geo. III., c. 100, which provides:—1. That where any person shall be restrained of his liberty other than from some criminal or supposed criminal matter, and except persons imprisoned for debt, or by process in any civil suit, any of the Barons of the Exchequer of the degree of the coif, or any of the Justices of either Bench, shall upon affidavit showing a probable and reasonable ground for such complaint, award in vacation time a writ of *habeas corpus*, under the seal of the court whereof he is a Judge, directed to the person in whose custody the party is confined, which shall be returnable immediately before himself or any other Judge of the court. 2. That upon disobedience to the writ the Judge before whom it is returnable may issue a warrant to arrest the party guilty of such contempt. 3. That if the writ be awarded so late in vacation that it cannot be conveniently obeyed during vacation, the same may be made returnable in the court to which the Judge by whom it is awarded belongs, on a certain day in the next term. 4. That if such writ shall be awarded by the court itself of Queen's Bench, Common

Pleas, or Exchequer, so late that it cannot be conveniently obeyed during the term, the same may be made returnable in the then next vacation before any of the Judges. 5. That though the return to the writ may be good in law, it shall be lawful for the Judge before whom it is returnable, to proceed to examine into the truth of the facts, and if it appear doubtful to him whether they be true or not, it shall be lawful for such Judge to let to bail the person so confined, upon his entering into a recognizance to appear in the court to which the Judge belongs in the term following, which court may proceed to examine into the truth of the facts, in a summary way by affidavit, and to order and determine as to the discharge, bailing, or remanding of the party. 6. That the like proceeding for controverting the truth of the return may be had in the case where the writ shall be awarded by the court itself, or be returnable therein. 7. That the several provisions aforesaid shall extend to all writs of *habeas corpus* awarded in pursuance of the 31 Car. II., c. 2. Lastly, that the *habeas corpus* according to this 56 Geo. III., c. 100, may run into any county, palatine, or cinque port, or other privileged place, or the islands of Jersey, Guernsey, or Man, or any port, harbour, road, creek or bay upon the coast of England or Wales, lying out of the body of any county.

Besides the efficacy of the writ of *habeas corpus*, in liberating the subject from illegal confinement in a public prison, it also extends its influence to remove every unjust restraint of personal freedom in private life, though imposed by a husband or a father; but when women and infants are brought before the court by a *habeas corpus*, the court will only set them free from an unmerited or unreasonable confinement, and will not determine the validity of a marriage, or the right to the guardianship, but will hold them at liberty to choose whither they will go; and if there be any reason to apprehend that they will be seized in returning from the court, they will be sent home under the protection of an officer. But if a child is too young to have any discretion of its own, then the court will deliver it into the custody of its parent, or the person who appears to be its legal guardian. 3 Burr. 1434.

HABEAS CORPUS AD TESTIFICANDUM (that you have the body to testify), a writ to bring a witness into court, when he is in custody at the time of a trial. He must be a material witness, and willing to attend. If he be in criminal custody, the writ must be moved for in the Queen's Bench, and it is *nisi* only in the first instance. The Court will not grant this writ to bring up a prisoner at war; an application must be made to the Secretary of State. *Chit. Arch. Prac.* 233.

HABEAS CORPUS CUM CAUSA (that you have the body with the cause), a writ which a defendant may have to remove

himself from one prison to another; also a writ to remove a cause from an inferior court into a superior court, when the defendant is in custody in the court below. *Chit. Arch. Prac.* 941, 944.

HABENDUM OF A DEED, that part of a conveyance, &c., which determines the quantity of interest conveyed; but should the quantity be expressed in the premises, then the *habendum* may lessen, enlarge, explain, or qualify, but not totally contradict, or be repugnant to the estate granted in the premises. See **DEED**.

HABENTIA, riches. *Mon. Ang. t. 1, p. 100.*

HABERE FACIAS POSSESSIONEM (that you cause to have possession), a writ that issues for a successful plaintiff in ejectment, to put him in possession of the premises recovered. If the first writ be not executed, an *alias*, &c., may be sued out. The officer, if necessary, may break open outer doors, in order to give possession, or he may take the *posse comitatus* with him if he fear violence. *Chit. Arch. Prac.* 765.

HABERE FACIAS SEISINAM (that you cause to have possession), a writ addressed to the sheriff to give seisin of a freehold estate recovered by *ejectione firmæ*, or other action. *O. N. B.* 154.

HABERE FACIAS VISUM (that you cause to have view), a writ that lay in divers cases in real actions, as in formedon, &c., where a view was required to be taken of the lands in controversy. See **FORMEDON**.

HABERGEON, a helmet that covered the head and shoulders.

HABIT AND REPUTE, held and reputed. *Scotch Phrase.*

HABITATIONS, offences against. They are arson; negligently setting fire to houses and buildings by servants; and burglary.

HACHIA, a hack, pick, or instrument for digging.

HACKNEY COACHES. The provisions relating to these vehicles are embodied in the 1 & 2 Win. IV., c. 22, amended by 6 & 7 Vict., c. 86, which repeals all previous acts on this subject.

HADROTE, a recompence for an affront offered to a priest.

HADERUNGA [*had*, Sax., person, and *arung*, honored], respect of persons; partiality.

HADGOVEL, a tax, or mulct.

Hæc fuit candida illius ætatis fides et simplicitas, quæ pauculis lineis omnia fidei firmamenta posuit. (O. Lit. 6.—(The candid faith and simplicity of this age was such, that in a few lines was contained every thing binding to faith.)

HÆREDE ARDUCTO, an ancient writ that lay for the lord, who having by right the wardship of his tenant under age, could not obtain his person; the same being carried away by another person. *O. N. B.* 93.

HÆREDE DELIBERANDO ALTERI QUI HABET CUSTODIAM TERRÆ, an ancient writ, directed to the sheriff to require one that had the body of an heir being in ward, to deliver him to the person whose

ward he was by reason of his land. *Reg. Orig.* 161.

HÆREDE RAPTO, an ancient writ that lay for the ravishment of the lord's ward. *Reg. Orig.* 163.

Hæredem Deus facit, non homo. Co. Lit. 7 b. —(God makes the heir, not man.)

HÆREDIPETA, the next heir to lands.

Hæredipeta suo propinquo vel extraneo periculo sane custodia nullus committatur. Co. Lit. 88 b. —(No one should be committed to the charge indeed of one, whether his own relation or a stranger, who is dangerously seeking to get himself made heir.)

Hæreditas, alia corporalis, alia incorporalis; corporalis est, quæ tangi potest et videri; incorporalis quæ tangi non potest nec videri. Co. Lit. 9. —(Inheritance, some corporeal, others incorporeal: corporeal is that which can be touched and seen; incorporeal, that which can neither be touched nor seen.)

Hæreditas est successio in universum jus quod defunctus habuerat. Co. Lit. 237. —(Inheritance is the succession to every right which was possessed by the late possessor.)

Hæreditas et hæres dicuntur ab hærendo, quod est arctè insidendo, nam qui hæres est, hæret; vel dicitur ab hærendo, quia hæreditas sibi heret: licet nonnulli hæredem dictum velint, quod herus fuit, hoc est dominus terrarum, &c., quæ ad eum perveniunt. Co. Lit. 7. —(Inheritance and heir are called from inheriting, because it is closely in expectancy, for he who is heir inherits; or it is called from inheriting, because the inheritance is inherited by him: some say the word heir, because he was heir, that is, the lord of lands, &c., which come to him.)

HÆREDITAS JACENS, an estate in abeyance. *Hæreditas nunquam ascendit.* Glan., l. 7, c. 1. —(Inheritance never ascends.)

This feudal maxim was exploded by 3 & 4 Wm. IV., c. 106, § 6. See **CANONS OF INHERITANCE**.

Hæreditus, n'est pas tant solement entendue l'ou home ad terres ou tenements per descent d'enheritage, mes auxi chescun fee simple ou tail que home ad per son purchase puit estre dit, enheritance, pur ceo que ses heirs luy purront enheriter. Co. Lit. 26. —(Inheritance does not only comprehend all the lands and tenements which a man has by descent from his ancestors, but also every fee simple or fee tail which he has by purchase is also called inheritance, because his heir can inherit it from him.)

Hæredum appellatione veniunt hæredes hæredum in infinitum. Co. Lit. 9. —(By the title of heirs come the heirs of heirs, in infinity.)

Hæres est alter ipse, et filius est pars patris. 3 Co. 12. —(An heir is a second self, and a son is part of his father.)

Hæres est aut jure proprietatis, aut jure representationis. 3 Co. 40. —(An heir is by right of property, or by right of representation.)

Hæres est eadem persona cum antecessore.—pars antecessoris. Co. Lit. 22. —(The heir is the same person with his ancestor,—a part of his ancestor.)

Hæres est nomen collectivum. 1 Vent. 215. —(Heir is a collective name.)

Hæres est nomen juris, filius est nomen naturæ. Bacon. —(Heir is a name of law, son is a name of nature.)

HÆRES FACTUS, an heir appointed; a devisee.

Hæres hæredis mei est meus hæres. —(The heir of my heir is my heir.)

Hæres hæredis succedit in universum jus quod defunctus habuit. —(An heir of an heir succeeds to the whole right which the deceased had.)

Hæres legitimus est quem nuptiæ demonstrant. Co. Lit. 7 b. —(He is a lawful heir whom wedlock declares.)

Hæres minor uno et viginti annis non respondebit, nisi in casu dotis. Moor. 348. —(An heir minor, under twenty-one years of age, is not answerable, except in the matter of dower.)

HÆRES NATUS, an heir born; an heir by descent.

Hæres non tenetur in Angliâ ad debita antecessoris reddenda, nisi per antecessorem ad hoc fuerit obligatus præterquam debita regis tantum. Co. Lit. 386. —(In England the heir is not bound to pay his ancestor's debts, unless he be bound to it by the ancestor, except debts due to the king.)

But now by 3 & 4 Wm. IV., c. 104, he is liable. See **FEE SIMPLE**, 3.

HÆRETICO COMBURENDO, an ancient writ against a heretic, who having been convicted of heresy by the bishop and abjured it, afterwards fell into the same again, and some other, and was thereupon delivered over to the secular power. *F. N. B.* 69.

HAFNE, a haven or port.

HAGA, a house in a city or borough. *Scott.*

HAGIA, a hedge.

HALA, a park enclosed.

HAILWORKFOLK (*i.e.*, holyworkfolk), those who formerly held lands for the service of defending or repairing a church or monument. *Bailey.*

HAKETON, a military coat of defence.

HALF-BLOOD, one not born of the same father and mother.

HALF-BROTHER, a brother by the father or mother's side.

HALF-ENDEAL, a moiety, or half of a thing.

HALF-MARK, a noble, or 6s. 8d. in money.

HALF-SEAL, that which is used in the Chancery for sealing of commissions to delegates, upon any appeal to the Court of Delegates, either in ecclesiastical or marine causes. Abolished.

HALF-TONGUE, a jury *de medietate linguæ*, empannelled to try foreigners.

HALIMASS, the feast of All Saints, on the 1st of November; and one of the cross quarters of the year was computed from Halimass to Candlemas.

HALKE, a hole.

HALLAGE, tolls paid for goods on merchandise vended in a hall.

HALIAMSHIRE, a part of the county of York, anciently so called, in which the town of Sheffield stands.

HALLMOTE, or **HALLIMOTE**, that court among the Saxons answering to our Court baron.

HALYMOTE, an holy or ecclesiastical court.

HALYWERCFOLE. See **HAILWORKFOLK**.

HAM, a place of dwelling; a home close; a little narrow meadow.

HAMBLING, or **HAMMELING OF DOGS**, expeditation.

HAMESECKEN, or **HOMESOKEN**, burglary; assaulting a man in his own house. *Scotch Law*.

HAMFARE, breach of the peace in a house.

HAMLET, **HEMEL**, **HAMPSEL**, a vill or little village.

HAMSOCA, or **HAMSOKEN**. See **HAMESECKEN**.

HAMMA, a close joining to a house; a croft; a little meadow.

HANAPER, a treasury, answering to our modern term, *exchequer*.

HANAPER-OFFICE, an office belonging to the common law jurisdiction of the Court of Chancery, so called, because all writs relating to the business of a subject and their returns, were formerly kept in a hamper, in *hanaperio*. 5 & 6 *Vict.*, c. 103.

HAND-BORROW, a surety; a manual pledge.

HAND-HABEND, a thief caught in the very fact, having the thing stolen in his hand.

HAND-GRITH, peace or protection given by the King with his own hand.

HAND-SALE, a custom among the northern nations of shaking hands to bind a bargain or contract.

HANGING, the mode of capital punishment which has been used in this country from time immemorial.

The manner in which death occurs in cases of hanging is far from being perfectly understood. There is, however, considerable variety in the physiological phenomena. 1. Apoplexy, not necessarily accompanied with rupture or extravasation, produced by pressure on the large blood-vessels leading to the head. 2. Another immediate cause of death, and about which there is hardly any dispute, is suffocation, or exclusion of air from the lungs. In many instances, it is thought that apoplexy and suffocation unite in producing the fatal termination. 3. A laceration of the trachea or larynx, or a luxation or fracture of the cervical vertebræ, from a rupture of the ligaments of the neck. The deductions drawn by Dr. Remer from actual examination, are; 1. The presence of ecchymosis on the neck is to be deemed a proof of death by hanging. 2. As it occasionally is wanting, its absence cannot be considered a positive proof of the contrary supposition; but, 3. When it is thus wanting, death has probably been suddenly caused by apoplexy.

In every suspected case, two questions may present themselves for solution by the medical witness:—

1. Was the individual suspended before or after death, or, in other words, has he been previously killed in some other way,

and then placed in this situation to avoid suspicion?

2. Whether the individual hung himself, or was hung by others.

The presumption in all these cases is favourable to the idea of suicide, since hanging is a difficult mode of perpetrating murder, unless the strength of the parties be greatly disproportionate, or the assailants be numerous and powerful. In a great majority of cases, it is proved to have been suicidal. An opinion is sometimes extremely difficult to be arrived at, as the marks left either from homicide or suicide may be precisely similar. *Beck's Med. Jurisp.* 616.

HANGING IN CHAINS. In atrocious cases, it was frequently usual for the Court to direct a murderer, after execution, to be hung upon a gibbet in chains near the place where the murder was committed, a practice quite contrary to the Mosaic law. *Deut.* xxi. 23. This practice, however, is now abolished by 4 & 5 *Wm. IV.*, c. 26.

HANGWITE, or **HANGWIT**, a liberty granted, whereby he is quit of a felon or thief hanged without judgment, or escaped out of custody. *Rastal*.

HANIG, customary labour.

HANSEATIC, pertaining to the Hanse Towns, or to their confederacy. The Hanse Towns in Germany were certain commercial cities which associated for the protection of commerce as early as the twelfth century. To this confederacy acceded certain commercial cities in Holland, England, France, Spain, and Italy, until they amounted to seventy-two; which for centuries commanded the respect and defied the power of kings. From the middle of the fifteenth century, the power of the confederacy, though still very formidable, began to decline. This, however, was not owing to any misconduct on the part of its leaders, but to the progress of that improvement it had done so much to promote. The civilization, which had been at first confined to the cities, gradually extended over the contiguous country; and feudal anarchy was everywhere superseded by a system of subordination and the progress of the arts. At present it only consists of Hamburg, Lubeck, and Bremen; and they, indeed, possess merely the shadow of their former state.

HANS GRAVE, the chief of a company; the head man of a corporation.

HANTELODE, an arrest.

HAP, to catch.

HARBINGER, an officer of the royal household.

HARBOURS. See **PORTS**.

HARNESS, all warlike instruments; the tackle or furniture of a ship.

HARO, **HARRON**, an outcry after felons and malefactors.

HASP and **STAPLE**, the form of the entry of an heir into premises situate in a royal borough in Scotland. The bailie, the town clerk, and the claimant, appear on the premises

when the claimant alleges his title, and proves it by witnesses, on which the bailie declares him to be heir, and directs him to take hold of the hasp and staple of the door as a symbol of possession, and then he enters the house and bolts himself in. On his coming out, the transaction is noted and registered. *Scotch Acts*, 1681, c. 11.

HAVENS. In order to secure the marine revenue, the Sovereign has the prerogative of appointing ports and havens, or such places only, for persons and merchandize to pass into and out of the realm, as shall be thought proper. By the feudal law all navigable rivers and havens were computed among the *regalia*, and were subject to the sovereign of the state. The English Sovereign is lord of the whole shore, and the guardian of the ports and havens, which are the inlets and gates of the realm. Legal ports were undoubtedly, at first, assigned by the Crown; since to each of them a court of portmote is incident, the jurisdiction of which must flow from the royal authority: the great ports of the sea are referred to as well known and established by 4 Hen. IV., c. 20, which prohibits the landing elsewhere under pain of confiscation: and the 1 Eliz., c. 11, recites that the franchise of landing and discharging had been frequently granted by the Crown.

But though the Sovereign had a power of granting the franchise of havens and ports, yet he had not a power of resumption, or of narrowing and confining their limits when once established; but any person had a right to load or discharge his merchandize in any part of the haven; whereby the revenue of the customs was much impaired and diminished, by fraudulent landings in obscure and private corners. This occasioned the 1 Eliz., c. 11; and 13 & 14 Car. II., c. 11, § 14, which enabled the Crown by commission, to ascertain the limits of all ports, and to assign proper wharfs and quays in each port for the exclusive landing and loading of merchandize. And by 46 Geo. III., c. 153, no pier, quay, wharf, jetty, breast, or embankment, shall be erected in or near to any public harbour without giving one month's notice to the admiralty with a saving, however, of the privileges of the city of London. 2 *Step. Com.* 521.

HUR, hatred. *Leg. W.* 1, c. 16.

HAUTHONER, a man armed with a coat of mail.

HAW, a small parcel of land so called in Kent; houses. *Co. Litt.* 5.

HAWARD. See **HAYWARD**.

HAUGH, or **HOWGH**, a green plot in a valley.

HAWBERK, or **HAWBERT**, he who held land in France, by finding a coat or shirt of mail, and to be ready with it when he shall be called. See **FIER D'HAUBERT**.

HAY, a hedge or enclosure; a net to take game.

HAY-BOTE, a liberty to take thorns and other wood to make and repair hedges, gates,

fences, &c., either by tenant for life or years; also wood for the making of rakes and forks. See **BOTE**.

HAYWARD, one who keeps a common herd of cattle of a town, and the reason of his being so called may be, because one part of his office is to see that they neither break nor cross the hedges of enclosed grounds; or because he keeps the grass from hurt and destruction. He is an officer appointed in the Lord's Court, and is to look to the fields and impound cattle trespassing thereon; to inspect that no pound breaches be made, and if any he, to present them to the leet, &c. *Kitch.* 46.

HEAD-BOROUGH, the head of a borough; a high constable. King Alfred instituted tithings, so called from the Saxon, because ten freeholders and their families composed one. These all dwelt together, and were sureties or free pledges to the King for the good behaviour of each other. One of the tithing is annually appointed to preside over the rest, being called the tithing-man or head borough.

Under the feudal law, he was an officer who had a principal government within his own pledge. He was also styled *borow-head*, *borsholder*, *third-borough*, *tithingman*, &c., according to the usage and diversity of speech in several places. The head boroughs were the chief of the ten pledges, the other nine being denominated *hand-borows*, or inferior pledges. *Encyc. Lond.* See **CONSTABLE**.

HEAD-COURTS, certain tribunals in Scotland, abolished by 20 Geo. II., c. 50.

HEAD-LAND, the upper part of ground left for the turning of the plough, whence the *head-way*. *Paroch. Antiq.* 587.

HEAD-PENCE, an exaction of a certain sum collected by the sheriff of Northumberland from the inhabitants of that county, without any account thereof to be made to the Crown. Abolished by 23 *Hen. VII.*, c. 7.

HEAD SILVER, dues paid to Lords of leets; also a fine of 40*l.* which the sheriff of Northumberland heretofore exacted of the inhabitants twice in seven years.

HEAFOD-WEARD, one of the services to be rendered by a thane and a geneat or villainus, but in what it consisted seems uncertain. *Anc. Hist. Eng.*

HEALFANG, or **HALSFANG**, [*hals*, Sax., neck, *fang*, to seize], the pillory; also a pecuniary mulct, to commute for standing in the pillory.

HEALGEMOTE, a court baron; an ecclesiastical court.

HEALTH, the faculty of performing all actions proper to a human body in the most perfect manner.

Injuries affecting a person's health are, where, by any unwholesome practices of another, a man sustains any damage in his vigour or constitution, as by selling him bad provisions or wine, by the exercise of a noisome trade, which infects the air in his neighbourhood, or by the neglect or unskilful manage-

ment of a surgeon, apothecary, or general practitioner who attends him. The remedy is by an action on the case for damages, and in cases of gross misconduct, the wrong done may be indicted.

The two offences against the public health are, those against the quarantine and vaccination acts, and selling unwholesome provisions. 4 *Bl. Com.*, c. xiii.

HEARING, the trial of a suit before a court of equity; an investigation of a controversy.

HEARSAY EVIDENCE. It is a general principle in the law of evidence, that if any fact is to be substantiated against a person, it ought to be proved in his presence by the testimony of a witness sworn to speak the truth; and the reason of the rule is, because evidence ought to be given under the sanction of an oath, and that the person who is to be affected by the evidence, may have an opportunity of interrogating the witness as to his means of knowledge, and concerning all the particulars of his statement. Hearsay evidence (whether spoken or written) of a fact, therefore, is not admissible.

The following cases, however, are clearly distinguishable from hearsay evidence:—

(1) The testimony of a deceased witness, who has been examined upon oath, on the trial of a former action between the same parties, and where the point at issue was the same as in the second action, is admissible on the trial of the second action, and may be proved by one who heard him give evidence; for such evidence on the former trial was not given in an extra-judicial manner, but upon oath: the parties to the suit were the same, and an opportunity was given for cross-examination. The person called to prove what a deceased witness said must undertake to repeat precisely his very words, and not merely to swear to their effect.

(2) Hearsay is often admitted in evidence, as part of the *res gesta* or transaction, which becomes the subject of enquiry; the meaning of which seems to be, that where it is necessary in the course of a cause to enquire into the nature of a particular act, or the intention of the party who did the act, proof of what the person said at the time of doing it is admissible in evidence, for the purpose of showing its true character.

The exceptions to the general rule of the inadmissibility of hearsay evidence are the following:—(1) dying declarations; (2) hearsay in questions of pedigree; (3) hearsay on questions of public right, customs, boundaries, &c.; (4) admissibility of old leases, rent-rolls, surveys, &c.; (5) admissibility of declarations against interest; (6) admissibility of rectors and vicars' books; (7) admissibility of broker of tradesmen. 1 *Stark. Evid.* 24; 1 *Phil. Evid.* 229.

HEARTH MONEY, a tax levied by 14 Car. II., c. 2. It was productive of great discontent, and therefore abolished by 1 W. & M., st. 1, c. 10.

HEBBERMEN, fishermen or poachers below London bridge, who fish for whittings,

flounders, smelts, &c., commonly at ebbing water. Punishable by 4 *Hen. VII.*, c. 15.

HEBBERTHEF, the privilege of claiming the goods and trial of a thief within a certain liberty.

HEBBING-WEARS, a device for catching fish in ebbing water.

HEBDOMAD, a week; a space of seven days.

HEBDOMADIUS, a week's man, canon, or prebendary in a cathedral church, who has the care of the choir and the officers belonging to it, for his own week. *Reg. Episc. Hereford MSS.*

HECK, an engine to take fish in the river *Ourse*. 23 *Hen. VIII.*, c. 18.

HECCAGIUM, rent paid to a lord of the fee for a liberty to use the engines called hecks.

HEDA, a small haven, wharf, or landing-place. *Old Records.*

HEDAGIUM, toll or customary dues at the lirth or wharf, for landing goods, &c., from which exemption was granted by the Crown to some particular persons and societies.

HEDGE-BOTE, necessary stuff to make hedges, which a lessee for years, &c., may of common right take from the ground leased. See *BOTE*.

HEGIRA, the epocha or account of time used by the Arabians and the Turks, who begin their computation from the day that Mahomet was compelled to escape from Mecca, which happened on Friday, July 16, A. D. 622, under the reign of the Emperor Heraclius. As the years of the Hegira consist of only 354 days, it is found by subtracting 622 from our year, and then multiplying by 365.52, and dividing by 354.

HEIR [*heire*, old Fr., *hæres*, Lat.], a person who succeeds by descent to an estate of inheritance. It is a *nomen collectivum*, and extends unto all heirs; and under heirs, the heirs of heirs are comprehended *in infinitum*.

The different kinds of heirs may be thus classed, and defined:—

(a) **Heir apparent**. He whose right of inheritance is indefeasible, provided he outlive the ancestor: as the eldest son, who must by the course of the common law be heir to his father on his death.

(b) **Heir by custom**. He depends upon a particular and local custom, as in borough English lands, the youngest son succeeds his father, while in gavelkind lands, all the sons inherit as parceners, and make but one heir. *Co. Lit.* 140.

(c) **Heir by devise**, or *hæres factus*. He is made, by will, the testator's heir or devisee, and has no other right or interest than the will gives him.

(d) **Heir general**, or heir *at law*. He who, after his father or ancestor's death, has a right to inherit all his lands, tenements, and hereditaments.

(e) **Heir presumptive**. He who, if the ancestor should die immediately, would, in the present circumstances of things, be his heir, but whose right of inheritance may be defeated by the contingency of some nearer heir being born; as a brother or nephew,

whose presumptive succession may be destroyed by the birth of a child; or a daughter, whose present hopes may be hereafter cut off by the birth of a son.

(5) *Hæres sanguinis et hæreditatis*. A son who may be defeated of his inheritance by his father's displeasure.

(6) *Heir special*. Issue upon whom an estate is entailed. The entail may either be upon the heirs *general* or *special*, being to be born of a particular mother; and these may be either male or female.

(7) *Ultimus hæres*. He to whom lands come by escheat or forfeiture, for want of proper heirs, or on account of treason or felony. He is either the lord of the manor or the Crown.

In the Scotch law, heir has a more extended signification, comprehending not only those who succeed to lands, but also successors to personal property also. It distributes heirs into the following classes:—

(a) *Heir active*. He who is served heir, and has the right of action.

(b) *Heir by conquest*. He who succeeds to the deceased in lands and other heritable rights, to which the deceased did not himself succeed as heir to his predecessors; as where a father leaves an estate purchased to his second son.

(c) *Heir of line*. He who succeeds lineally by right of blood.

(d) *Heir male*. The nearest heir male who can succeed.

(e) *Heir passive*. He whom the law makes liable to be heir.

(f) *Heirs portioners*. When women succeed, they have all equal portions.

(g) *Heirs of provision*, or heirs by *destination*. Those who succeed by virtue of a particular provision in a deed or instrument.

(h) *Heir of tailzie*. He on whom an estate is entailed.

(i) *Heir whatsoever*. An heir at law.

HEIRDOM, succession by inheritance.

HEIRESS, a female heir. Where there are several, they are called *co-heiresses*.

HEIRLOOM [*hæres*, Lat., heir, and *geloma*, Sax., goods], personal chattels, such as carriages, utensils, and other household implements, which go by the special custom of a particular place to the heir, together with the inheritance. Heirlooms, though mere chattels, cannot be devised away from the heir by will; but such devise is void, even by a tenant in fee simple. For though the owner might during his life have sold or disposed of them, as he might of the timber of the estate, since, as the inheritance was his own, he might mangle or dismember it as he pleased; yet they being at his death instantly vested in the heir by the custom, the devise (which is subsequent, and not to take effect till after his death) shall be postponed to the custom whereby they have already descended.

The term of "*heirlooms*" is often applied in practice to the case where certain chattels—for example, pictures, plate, or furniture,

are directed by will or settlement to follow the limitations thereby made of some family mansion or estate. But the word is not here employed in its strict and proper sense, nor is the disposition itself beyond a certain point effectual; for the articles will in such case belong absolutely to the first person who, under the limitations, would take a vested estate of inheritance in them, supposing them to be real estate; and if he die intestate, will pass to his personal representative, and not to his heir. *2 Step. Com.* 265.

HEIRSHIP MOVEABLES, those things which the law withholds from the executors and next of kin, and gives to the heir, that he may not succeed to a house and lands completely dismantled. They consist of the best of everything; furniture, horses, cows, oxen, farming utensils, &c., but not including fungibles. *Scotch Law*.

HELSING, a Saxon brass coin, of the value of a halfpenny.

HELM, thatch or straw; a covering for the head in war; a coat of arms bearing a crest; the steerage or rudder in a ship.

HELOWE-WALL [*hælan*, Sax., to cover], the end-wall covering and defending the rest of the building.

HEMOLDBORH, or **HEIMELBORCH** [*heimilld*, O. N., *hjemmel*, Dan., just claim to a thing, and *bohr*], a title to possession.

The admission of this old Norsk term into the laws of the Conqueror, it is difficult to account for; it is not found in any Anglo-Saxon law extant. *Anc. Inst. Eng.*

HENCHMAN, a page; an attendant; a herald.

HENEDPENNY, a customary payment of money instead of hens at Christmas; a composition for eggs.

HENFARE, a fine for flight on account of murder. *Domesday Book*.

HENGEN, a prison in which those confined were condemned to hard labour. *Anc. Inst. Eng.*

HENGHEN, a prison; a house of correction.

HENGWITE. See **HANGWIT**.

HEORDFÆTE, or **HUDEFÆST**, a master of a family keeping house, distinguished from a lower class of freemen—viz., *folgeras* (*folgarii*), who had no habitations of their own, but were house retainers of their lords. *Anc. Inst. Eng.*

HEORDPENNY, Peter pence.

HEORDWERCH, the service of herdsmen, done at the will of their lord.

HEPTARCHY [*ἑπτά*, Gk., and *ἀρχή*], a government exercised by seven persons, or a nation divided into seven governments.

In the year 560, seven different monarchies had been formed in England by the German tribes, namely, that of Kent, by the Jutes; those of Sussex, Wessex, and Essex, by the Saxons; and those of East Anglia, Bernicia, and Deira, by the Angles. To these were added, about the year 586, an eighth, called the kingdom of Mercia, also founded by the Angles, and comprehending nearly the whole of the heart of the kingdom. These states formed together what has been designated

the Anglo-Saxon Octarchy, or more commonly, though not so correctly, the Anglo-Saxon Heptarchy, from the custom of speaking of Deira and Bernicia under the single appellation of the kingdom of Northumberland.

HERALD [*here*, Sax., an army, and *heald*, a champion, *herault*, *heraut*, Fr., *herald*, Ger., *araldo*, Ital., because it was part of his office to charge or challenge unto battle or combat], an officer whose business it is to register genealogies, adjust ensigns armorial, regulate funerals, and anciently to carry messages between princes, and proclaim war and peace.

Heralds were anciently called *dukes at arms*, probably because the conducting of affairs concerning peace and war devolved upon them, from the Latin *ducere ad arma*; their office being to carry messages to the enemy, and to denounce war, or to proclaim peace. Hence the persons of heralds were deemed sacred by the law of nations, and were received and protected by belligerent powers, as flags of truce are in the present day.

The three chief heralds are called *Kings of Arms*; of whom (1), *Garter* is the principal, instituted by Henry V. His office is to attend the Knights of the Garter at their solemnities, and to marshal the funerals of the nobility. (2), *Clarenceux, King of Arms*, ordained by Edward IV., so called from the Duke of Clarence. He is to marshal and dispose the funerals of the inferior nobility on the south side of the Trent. (3), *Norroy (North Roy), King of Arms*, holds a similar department on the north side of the river Trent. These two last are denominated *provincial heralds*, because they divide the kingdom between them into provinces.

Besides the kings of arms, there are six subordinate heralds, according to their original, as they were created to attend dukes and great lords in martial expeditions, *i. e.*, *York, Lancaster, Chester, Windsor, Richmond*, and *Somerset*: the four former were instituted by Edward III., and the two latter by Edward IV. and Henry VIII. To these, upon the accession of George I. to the crown, on account of his Hanoverian dominions, a new herald was added, called *Hanover herald*; and another styled *Gloucester, King of Arms*.

To the superior and inferior heralds are added four others, called *marshals* or *pursuivants of arms*, who commonly succeed in the places of such heralds as die or are promoted; they are denominated *blue-mantle*, *rouge-croix*, *rouge-dragon*, and *portcullis*.

Lord Lion's Office in Scotland, and *Ulster King of Arms* in Ireland, are distinct and independent. *Encyc. Lond.*

HERALDS' COLLEGE, an ancient royal corporation, first instituted by Richard III. in 1483, situated on St. Bennet's Hill, near St. Paul's, in the city of London. The above named heralds, together with the earl marshal and a secretary, are the members of this corporation.

The heralds' books, compiled when progresses were solemnly and regularly made into every part of the kingdom, to enquire into the state of families, and to register such marriages and descents as were verified to them upon oath, are allowed to be good evidence of pedigrees. 3 *Stark. Evid.* 843.

HERBAGIUM ANTERIUS, the first crop of grass or hay, in opposition to after-math and second cutting. *Paroch. Antiq.* 459.

HERBENGER, or **HARBINGER**, an officer in the royal house, who goes before and allots the noblemen and those of the household their lodgings; also, an innkeeper.

HERBERGAGIUM, lodgings to receive guests in the way of hospitality. *Cowell.*

HERBERGARE, to harbour; to entertain.

HERBERGATUS, spent in an inn.

HERBERY, or **HERBURY**, an inn. *Cowell.*

HERCE, **HERCIA**, an harrow. *Fleta*, l. ii. c. 77.

HERCIARE, to harrow.

HERDEWICH, or **HERDEWIC**, a grange or place for cattle or husbandry.

HERDWERCH, **HEORDWERCH**, herdmen's work, or customary labour, done by shepherds and inferior tenants, at the will of the lord.

HEREBANNUM, a mulct for not going armed into the field when summoned. *Spelm.*

HEREBOTE, the royal edict, commanding the people into the field.

HEREDITAMENTS, every kind of property that can be inherited; *i. e.*, not only property which a person has by descent from his ancestors, but also what he has by purchase, because his heir can inherit it from him. The two kinds of hereditaments are *corporeal*, which are tangible (in fact, they mean the same thing as land), and *incorporeal*, which are not tangible, and are the rights and profits annexed to, or issuing out of, land.

The enumeration of incorporeal hereditaments in Hale's Analysis (p. 48) is the following:—rents, services, tithes, commons, and other profits in *alieno solo*, pensions, offices, franchises, liberties, villeins, dignities. But Blackstone enumerates ten principal kinds:—advowsons, tithes, commons, ways, offices, dignities, franchises, corodies or pensions, annuities, and rents. *Com. i.* 21.

Although the word "hereditament" applies both to realty and personalty, yet it is in a different mode of relation. When applied to *realty* it generally denotes the *subject* of property, apart from its nature and extent; but when applied to *personalty*, it does not then denote the *subject*, but signifies some inheritable *right*, of which the subject is susceptible.

There is a third application of this word—it is used to denote inheritable *rights* relating to land, or something issuing therefrom or exercisable therein, or having some local connection or relation *distinct* from the enjoyment of the land itself. In this view of the description, hereditaments divide

themselves into real, personal, and mixed, and, therefore, as was said before, they are applicable to all the kinds of property.

Fearne's reading on the Stat. of Inrolments.

HEREDITARY RIGHT TO THE CROWN.

The Crown of England, by the positive constitution of the kingdom, has ever been descendible, and so continues, in a course peculiar to itself, yet subject to limitation by Parliament; but, notwithstanding such limitation, the Crown retains its descendible quality, and becomes hereditary in the prince to whom it is limited. 1 *Bl. Com. chap. iii.*

HEREFARE, a military expedition; a going to war.

HEREGELD, a tribute or tax levied for the maintenance of an army.

HEREMITORIUM, a solitary place of retirement for hermits.

HERENACH, an archdeacon.

HEREMONES, or HERETEAMS, followers of an army.

HERESLITA, HERESSA, HERESSIZ, a hired soldier who departs without license.

HERESY [*αἵρεσις*, Gk.], an opinion of private men, different from that of the orthodox church.

By 1 Eliz., c. 1, all former statutes relating to heresy are repealed which left the jurisdiction of heresy as it stood at common law; that is, left the simple offence to be visited by spiritual punishment in the ecclesiastical courts. Heresy is now only such tenets which have been heretofore so declared:—1, by the words of the canonical Scriptures; 2, by the first four general councils, or such others as have only used the words of the Holy Scriptures; or, 3, which shall hereafter be so declared by Parliament, with the assent of the clergy in convocation.

By 9 & 10 Wm. III., c. 32, if any person, having been educated in, or made profession of Christianity, shall, by writing, printing, teaching, or advised speaking, maintain that there are more Gods than one, or deny the Christian religion to be true, or the Holy Scriptures to be of divine authority, and be thereof convicted by two witnesses, he shall, unless he recant, incur such civil disabilities as therein mentioned, and, on a second conviction, shall also suffer imprisonment for the term of three years.

HERETIC, one that adheres to and is convicted of heresy.

HERETICO COMBURENDO. See *DE HERETICO COMBURENDO*.

HERETOCH [*here*, an army, and *teohan*, to draw or lead], a general, leader, or commander; also a baron of the realm.

HERETUM, a court or yard.

HERIGALDS, a sort of garment. *Cowell.*

HERIOT [*heregeat*, Sax.], a tribute to the lord of whom a tenement is held. There are two kinds:—(1) heriot service, payable on the death of a tenant in fee simple, due upon a special reservation, and extinguished if the lord purchase part of the tenancy; (2) heriot custom, depending entirely on

general usage, due upon the death or alienation of a tenant for life. It is sometimes the best live beast or *averium* which a tenant dies possessed of; sometimes the best inanimate good, as a jewel or piece of plate; but it must be a personal chattel. In some places there is a customary composition in money, as 10s. or 20s. in lieu of a heriot. Heriot differs from relief, in that heriot is a personal, relief is a predial, service; and again, a heriot is usually paid on the determination of a tenancy, while a relief is due on the accession of an heir.

The seizing of heriots, when due on the death of a tenant, is a species of self-remedy, not much unlike that of taking cattle or goods in distress. As for that division of heriots which is called heriot service, and is only a species of rent, the lord may distrain for it, as well as seize; but for heriot custom, which lies only in *prender*, and not in *render*, the lord may seize the identical thing itself, but cannot distrain any other chattel for it. 3 *Step. Com.* 573.

HERISCHILD, military service, or knight's fee.

HERISCINDIUM, a division of household goods.

HERISLIT, laying down of arms.

HERISTALL, a castle.

HERITABLE BOND, a bond for money, joined with a conveyance of land or heritage, to be held by a creditor as security for his debt. *Scotch Term.*

HERITABLE JURISDICTION, grants of criminal jurisdiction, anciently bestowed on great families in Scotland, with a view to the more easy administration of justice. Abolished by 20 Geo. II., c. 43.

HERITABLE RIGHTS, all rights to land, or whatever is connected with land, as mills, fishings, tithes, &c. *Scotch phrase.*

HERMAPHRODITE. See *DOUBTFUL SEX*. *Hermaphroditus, tam masculo quam feminae comparatur, secundum praevalentiam sexus incalescentis.* Co. Lit. 8.—(An hermaphrodite is to be considered male or female, according to the predominancy of the prevailing sex.)

HERMER, a great lord.

HERMITAGE, a solitary place.

HERMITORIUM, the chapel or place of prayer belonging to a hermitage.

HERMOGENIAN CODE. See *CODEx HERMOGENIANUS*.

HERnescus, a heron. *Cowell.*

HERNESIUM, household goods; implements of trade or husbandry.

HERONDES, heralds.

HERRING SILVER, a composition in money for the custom of paying such a number of herrings for the provision of a religious house.

HERSHIP, the illegally driving off cattle from the grounds of a proprietor. *Scotch Term.*

HESIA, an easement.

HESTA, HESTHA, a little loaf of bread.

HESTCORN, vowed or devoted corn.

HETÆRARCHA [*ἑταῖρος*, Gr., friend, and

ἀρχή, government], the head of a religious house; the head of a college; the warden of a corporation.

HEUVELBORGH, a surety for debt.

HEXHAM, a very ancient town in the county of Northumberland, celebrated as the *Ærelo-dunum* of the Romans. It was made a county palatine in the reign of Henry VIII., but it is now united to Northumberland. 14 *Eliz.*, c. 13.

HEYBOTE. See **HAYBOTE**.

HEYLOED, a customary load or burden laid upon inferior tenants for mending or repairing the heys or hedges. *Cowell*.

HEYMECTUS, a hay-net.

HIBERNAGIUM, season for sowing winter corn.

HIBRID, or **HIBRIS**, a mongrel or mule; also one born of parents of different countries.

HIDAGE, an extraordinary tax formerly payable to the Crown for every hide of land. This taxation was levied, not in money, but provision of armour, &c.

HIDE AND GAIN, arable land. *Co. Lit.* 856.

HIDE OF LAND, such a space as might be ploughed with one plough, or as much as would maintain the family of a hide or mansion-house. According to some, it was sixty acres; others make it eighty; and others, again, a hundred. The quantity very probably was always determined by local usage.

HIDEI, a place of protection, or sanctuary.

HIDGILD, **HIDEGILD**, the price by which a vellein or servant redeemed his skin from being whipped, in such trespasses as anciently incurred that corporal punishment.

HIERLOOM. See **HEIRLOOM**.

HIERARCHY [*ἱεράς*, Gr., sacred, and ἀρχή, government], direction in religious concerns and things sacred.

Of whatever denomination may be the persons who take the lead in conducting the serious and sacred concerns of religious institutions; whether they be styled presbyters, elders, ministers, priests, or bishops, such persons do virtually and according to the true and real meaning of the term, constitute a hierarchy. It is only by limitation of its just sense, and by partial application of it under such restriction, that hierarchy is taken to mean "episcopal direction," to the exclusion of other "direction in things sacred." If we would speak correctly, and if we would follow the true import of the word, hierarchy subsists as much among the chief ministers in the Church of Geneva and Scotland, as in the Church of Rome or England. For wherever there is regular form and order of sacred things, there is hierarchy; the very essence of which is conducting that regular form and order. *Encyc. Lond.*

HIGH COMMISSION COURT, established by 1 *Eliz.*, c. 1. It was instituted to vindicate the dignity and peace of the church, by reforming, ordering, and correcting the

ecclesiastical state and persons, and all manner of errors, heresies, schisms, abuses, offences, contempts, and enormities. The powers of this tribunal were directed to tyrannical and unconstitutional purposes; it was therefore abolished by 16 *Car. I.*, c. 11.

HIGH CONSTABLE. See **CONSTABLE**.

HIGH CONSTABLE OF ENGLAND, **LORD**. His office has been disused, except only upon great and solemn occasions, as the coronation or the like, ever since the attainder of Stafford, Duke of Buckingham, in the reign of Henry VIII. See **CHIVALRY**, **COURT OF**.

HIGH MISDEMEANOURS, misprisions.

HIGH STEWARD, *Court of the Lord High*, a tribunal instituted for the trial of peers indicted for treason or felony, or for misprision of either, but not for any other offence. The office of this great magistrate is very ancient, and was formerly hereditary, or at least held for life, or *dum bene se gesserit*; but now it is usually, and has been for many centuries past, granted *pro hac vice* only, and it has been the constant practice (and therefore seems now to have become necessary) to grant it to a lord of Parliament, else he is incapable to try such delinquent peer. When such an indictment is therefore found by a grand jury of freeholders in the Queen's Bench, or at the assizes before a Judge of *oyer and terminer*, it is to be removed by a writ of *certiorari* into the Court of the Lord High Steward, which only has power to determine it. A peer may plead a pardon before the Queen's Bench, in order to prevent the trouble of appointing a high steward, merely for the purpose of receiving such plea, but he cannot plead any other plea, because it is possible, that in consequence of such a plea, judgment of death might be pronounced upon him.

The Sovereign, therefore, in case a peer be indicted for treason, felony, or misprision, creates a Lord High Steward *pro hac vice*, by commission under the Great Seal, which recites the indictment so found, and gives his grace power to receive and try it *secundum legem et consuetudinem Angliæ*. When the indictment is regularly removed by *certiorari*, the Lord High Steward addresses a precept to a serjeant at arms, to summon the Lords to attend and try the indicted peer. All the peers who have a right to sit and vote in Parliament are summoned, at least twenty days before such trial, to appear and vote therein, and every Lord appearing and taking the proper oaths, may vote in the trial of such peer. The decision is by the majority, but a majority cannot convict, unless it consist of twelve or more.

During a session of Parliament, the trial is not properly in the court of the Lord High Steward, but before the High Court of Parliament. A Lord High Steward is, however, always appointed to regulate the proceedings; but he is rather in the nature of

a speaker or chairman than a Judge, for the collective body of the peers are the Judges, both of law and fact, and the High Steward has a vote with the rest, in right of his peerage. But in the Court of the Lord High Steward, which is held in the recess of Parliament, he is the sole Judge of matters of law, as the Lord's triers are in matters of fact, and he may vote upon the trial and regulate all the proceedings.

The Lords spiritual have a right to stay and sit in court in capital cases, till the court proceeds to the vote of guilty or not guilty. But this extends only to trials in full Parliament, for to the Court of the Lord High Steward (in which no vote can be given but that of guilty or not guilty) no bishop, as such, ever was or could be summoned. They have no right to be tried themselves in this court, and therefore ought not to be Judges thereof.

The method and regulation of proceeding differs little from trial by jury, except that no special verdict can be given, because the Judges are sufficiently competent to deal with the law as it arises out of the facts. 4 *Bl. Com.* 261.

HIGH STEWARD OF THE UNIVERSITIES. *Court of the Lord.* By the charter of 7 Jun., 2 Hen. IV., confirmed by 13 Eliz., c. 29, cognizance is granted to the University of Oxford, of all indictments of treasons, insurrections, felony, and mayhem, which shall be found in any of the Queen's courts against a scholar or privileged person; and they are to be tried before the Lord High Steward or his deputy, who is nominated by the Chancellor of the University, and approved of by the Lord High Chancellor of England. A special commission is given to him and others, to try the indictment then depending, according to the law of the land and the privileges of the University. The indictment must first be found by a grand jury, and then the cognizance claimed of it in the first instance, or at the first day.

When the cognizance is allowed, if the offence be a misdemeanour it is tried in the Chancellor's court by the ordinary Judge. If it be for treason, felony, or mayhem, it is then determined before the Lord High Steward, who issues one precept to the sheriff of the county, who returns a panel of eighteen freeholders, and another to the university bedels, who return a panel of eighteen matriculated laymen. The indictment is then tried by a jury *de medietate*, half of freeholders and half of matriculated laymen in the guildhall there. The sheriff must execute the university process, to which he is bound by an oath.

The University of Cambridge has also a similar jurisdiction. 4 *Bl. Com.* 277.

HIGH TREASON. Since *petit* treason was abolished by 9 Geo. IV., c. 31, § 2, the correlative term *high*, is not now usually retained, when speaking of this the highest civil crime. It is merely denominated treason. See **TREASON.**

HIGHNESS, a title of honour given to princes. The Kings of England, before James I., were not saluted with the title of *majesty*, but that of *highness* only. The children of crowned heads are generally styled *royal highness*.

HIGHWAY RATE, a tax chargeable upon the same property that is liable to the poor-rate. The rate is to be made and signed by the surveyor, who keeps accounts which may be inspected at all reasonable times by the rated inhabitants, without fee or reward. The yearly account is laid before the vestry, and examined and passed before justices of the peace, at the special sessions of the highways. 3 *Step. Com.* 265.

HIGHWAYS, public roads, which every subject of this kingdom has a right to use. They have either existed by prescription, by authority of local acts of Parliament, and by dedication to the use of the public.

The liability to keep highways in repair (in whatever manner they may happen to have first originated) is of common right, incumbent generally upon the parishes in which they respectively lie; but in some cases it attaches (by prescription) to particular townships, or other divisions of parishes, and occasionally to private individuals, bound *ratione tenuræ*, or in right of their estates, to repair some particular highway.

Highways in general, are regulated by 5 & 6 Wm. IV., c. 50 (amended by 4 & 5 Vict., cc. 51, 59), which has repealed all former enactments on the subject, and is applicable to all highways whatever, except turnpike roads, and roads, pavements, or bridges, falling under the provisions of local or personal acts of Parliament, a description which applies generally to the streets of towns.

The general plan of the act is to place highways under the care of surveyors, to be appointed for the respective parishes, subject to a superintending power to be exercised by the justices of the peace, at special sessions to be holden for the highways.

HIGHWAYMEN, robbers on the highways.

HIGLER, a person who carries from door to door, and sells by retail, small articles of provisions, &c.

HIS TESTIBUS (these being witnesses), a phrase anciently added in deeds, after *in cujus rei testimonium*, which witnesses were first called, the deed read, and their names entered down. The phrase is not now inserted.

HIKENILDE STREET, one of the four Roman roads of Britain, leading from St. David's to Tynemouth, thus described by Trevisa:—"The fourthe is called *Heykenyldestrete*, and stretcheth forth by Worcestre, by Wycombe, by Byrmyngeham, by Lichefeld, by Derby; by Chestrefeld, by Yorke, and fourth unto Tynmouthe." *Polychron.* l. i., c. 45.

HILARY TERM, a law period of time, beginning on the 11th and ending on the 31st January in each year. It is an issuable term. 1 *Wm. IV.*, c. 70, § 6.

HINDENI HOMINES, a society of men. The Saxons ranked men into three classes, and valued them as to satisfaction for injuries, &c., according to their class. The highest class were valued at 1200s., and were called *twelfhindmen*; the middle class at 600s., and called *sexhindmen*; the lowest at 200s., called *troyhindmen*. Their wives were termed *hindas*. *Brompt. Leg. Alfred*, c. 12.

HINE, or **HIND**, a husbandry servant.

HINE FARE, the loss or departure of a servant from his master.

HINEGELD. See **HIDGELD**.

HIRCISCUNDA, the division of an inheritance among heirs.

HIREMAN, a subject.

HIRING, [*locatio-conductio*], a bailment always for a reward or compensation. It is divisible into four sorts:—1. The hiring of a thing for use (*locatio rei*). 2. The hiring of work and labour (*locatio operis faciendi*). 3. The hiring of care and services to be performed or bestowed on the thing delivered (*locatio custodiæ*). 4. The hiring of the carriage of goods (*locatio operis mercium vehendarum*), from one place to another. The three last are but subdivisions of the general head of hire of labour and services.

Several ingredients are of the essence of the contract of bailment for hire. 1. There should be a thing in *esse*, which may be the subject of the contract. 2. It should be a thing capable of being let. 3. The bailee should have a right to use, enjoy, and possess it, during the period for which it is let. 4. There should be a price for the hire. And, 5. There should be a contract possessing a legal obligation between the parties.

To produce a legal obligation of the contract, it is necessary, 1, that the bailment should not be prohibited by law; 2, that it should be between persons competent to contract; and 3, that there should be a free and voluntary consent between the parties.

The rights, duties, and obligations of the parties resulting from the contract of bailment for hire, may be thus stated:—

I. Hire of things. The letter to hire implies an obligation to deliver the thing to the hirer; to refrain from every obstruction to the use of it by the hirer during the period of the bailment; to do no act that shall deprive the hirer of the thing; to warrant the title and right of possession to the hirer, in order to enable him to use the thing, or to perform the service; to keep the thing in suitable order and repair for the purposes of the bailment; and, finally, to warrant the thing free from any fault inconsistent with the proper use or enjoyment of it. It is the duty of the person letting to hire, according to the Roman law, to disclose the faults of the thing hired, and practise no artful concealment, to charge only a reasonable price therefor, and to indemnify the hirer for all expenses, which are properly payable by the letter. The rights of the hirer are that he

acquires the right of possession only of the thing for the particular period or purpose stipulated (but he acquires no property in the thing); and that he also acquires the exclusive right to the use of the thing during the time of the bailment. His duties are to put the thing to no other use than that for which it is hired; to use it well; to take care of it; to restore it at the time appointed; to pay the price or hire; and, in general, to observe whatever is prescribed by the contract, or by law, or by custom. The contract may be dissolved or extinguished in respect to future liabilities in various ways:—1, by the mere efflux of the time, or the accomplishment of the object for which the thing is hired; 2, by the loss or destruction of the thing by any inevitable casualty; 3, by a voluntary dissolution of the contract by the parties; and 4, by operation of law, as where the hirer becomes proprietor by purchase or otherwise of the thing hired. How far these principles, which are derived altogether from the Roman and foreign laws, are to be deemed satisfactorily established in our jurisprudence, is a matter for consideration, since the common law does not furnish any direct recognitions of them. But it may be safely affirmed, that they are so consonant with general justice and with the nature of the contract, that, in the absence of any controlling authority, they may be used as fit guides to assist our general reasoning.

II. Hire of labour and services, divisible into two branches:—(a) *locatio operis faciendi*, and (b) *locatio operis mercium vehendarum*, mentioned as the 2d and 4th divisions of the four sorts of hiring above set forth.

(a) The *locatio operis faciendi* may be subdivided into two kinds:—(a) the hire of labour and services, or *locatio operis faciendi*, strictly so called; such are the hire of tailors to make clothes, of jewellers to set gems, and of watchmakers to repair watches; (b) *locatio custodiæ* (the third division first above mentioned), or the receiving of goods on deposit for a reward for the custody thereof, which is properly the hire of care and attention about the goods, such as warehousemen, wharfingers, &c.

(a) In contracts for work it is of the essence of the contract:—1, that there should be work to be done; 2, that it should be to be done for a price or reward; and, 3, that there should be a lawful contract between parties capable and intending to contract. The obligations and duties on the part of the employer, as deduced in the foreign law, are principally these:—1, to pay the price or compensation; 2, to pay for all proper, new, and accessorial materials; 3, to do every thing on his part to enable the workman to execute his engagement; 4, to accept the thing when it is finished. If before the work is finished, the thing perishes by internal defect, by inevitable accident, or by irresistible force, without any default of the workman, then, 1, if the work is independent of any materials or pro-

perty of the employer, the manufacturer has the risk, and the unfinished work perishes to him; 2, if he is employed in working up the materials, or adding his labour to the property of the employer, the risk is with the owner of the thing, with which the labour is incorporated; 3, if the work has been performed in such a way as to afford a defence to the employer against a demand for the price, if the accident had not happened (as if it were defectively or improperly done), the same defence will be equally available to him after the loss. The obligations or duties on the part of the workman or undertaker are thus summed up in the foreign law:—to do the work; to do it at the time agreed on; to do it well; to employ the materials furnished by the employer in a proper manner; and, lastly, to exercise a proper degree of care and diligence about the work.

(b) The hiring of care and attention. To this class belong agistors of cattle; warehousemen; forwarding merchants and wharfingers. They are bound to ordinary diligence, and of course are responsible for losses by ordinary negligence.

(B) The *locatio operis mercium vehendarum*, or the carriage of goods for hire. In respect to contracts of this sort entered into by private persons, who do not exercise the business of common carriers, there does not seem to be any material distinction, varying the rights, obligations, and duties of the parties from those of other bailees for hire. Every such private person is bound to ordinary diligence, and to a reasonable exercise of skill; and of course he is not responsible for any losses not occasioned by the ordinary negligence of himself or of his servants. The exceptions to this general rule are postmasters, innkeepers, and common carriers. These are under peculiar regulations consonant with public policy. See those titles respectively. *Story on Bailments*, chap. vi.

HIRST, or HURST, a little wood. *Domesday*.

HIWISC, a hide of land.

HIAF AETA, a servant fed at his master's cost.

HIAFORDSOCNA, a lord's protection.

HLASOCNER, the benefit of the law.

HLOTH, an unlawful company from eight inclusive to thirty-five. *Cowell*.

HLOTHBOTE, a mulct set on him who commits homicide in a riot or hloth.

HLYTAN [*sortes*], lots.

HOASTMEN, an ancient guild or fraternity in Newcastle-upon-Tyne, who were concerned in selling or shipping coal.

HOBLERS, or HOBILERS, light horsemen; also certain tenants, bound by their tenure to maintain a little light horse for giving notice of any invasion, or such like peril, towards the sea-side. *Camd. Brit.*

HOCCUS SALTIS, a hoke, hole, or lesser pit of salt.

HOCKETTOR, or HOCQUETEUR, a knight of the post; a decayed man; a basket carrier. *Cowell*.

HOCK-TUESDAY-MONEY, a duty given to the landlord, that his tenants and bondmen might solemnize that day on which the English conquered the Danes, being the second Tuesday after Easter week. *Cowell*.

HOGA, HOGIUM, HOCH, a mountain or hill.

HOGASTER, a little hog; a young sheep.

HOGENHINE. See *THIRD-NIGHT-AWN-HIND*.

HOGGACIUS, HOGGASTER, a sheep of the second year.

HOKEDAY. See *HOCK-TUESDAY-MONEY*.

HOLD, or WOLD, a governor or chief officer. *Giba. Camd.*

HOLDER, a payee of a bill of exchange or a promissory note.

HOLDIN TENURE. *Scotch Term*.

HOLDING OVER, keeping possession of land after expiration of a term in it.

HOLDING UP HAND. When a prisoner is brought to the bar in treason or felony, he is called upon by name to hold up his hand; which, though it may seem a trifling circumstance, yet is of this importance, that by the holding up of the hand, he owns himself to be of that name by which he is called. It is not, however, an indispensable ceremony, for being calculated merely for the purpose of identifying the person; any other acknowledgment will answer the purpose as well. *4 Step. Com.* 393.

HOLM [*hulmus*, Sax., *insula amnica*, Lat.], an isle, or fenny ground; a river island; also a hill or cliff.

HOLOGRAPH [*ῥῶλος*, Gk., all, and *γράφω*, to write], a deed written entirely by the grantor himself, which, on account of the difficulty with which the forgery of such a document can be accomplished, is held by the Scotch law valid without witnesses.

HOLT, a wood.

HOLIDAY, an anniversary feast; a time of festivity. Also called a red-letter day.

State holidays are either appointed by act of Parliament, or founded on ancient usage. The former are, the 5th November, to be kept as a day of thanksgiving, *3 Jac., c. 1*; the 29th May to be an anniversary thanksgiving, *12 Car. II., c. 14*; the 30th January to be kept as an anniversary day of humiliation, *12 Car. II., c. 3, § 1*; the second September, to be annually kept as a fast in London, *19 Car. II., c. 3, § 28*. The latter are the birthday, accession, proclamation, and coronation of the reigning monarch; and also the birthday of the consort and Prince of Wales. Besides these, fast and thanksgiving days are occasionally appointed by royal proclamation.

As regards the holidays to be allowed in the common law offices, the *3 & 4 Wm. IV., c. 42, § 43*, after reciting, "that the observance of holidays in the courts of common law during term time, and in the offices belonging to the same, on the several days on which holidays are now kept, is very inconvenient, and tends to delay in the administration of justice," enacts, "that

none of the several days mentioned in the 5 & 6 Edw. VI., c. 3, shall be observed or kept in the said courts, or in the several offices belonging thereto, except Sundays, the days of the nativity of our Lord, and the three following days, and Monday and Tuesday in Easter week." By rule of Hilary Term, 6 Wm. IV., it is ordered, that "thenceforth, in addition to the said days, the following, and none other, shall be observed in the several offices belonging to the said courts, viz., Good Friday and Easter Eve, and such of the four days following as may not fall in the time of term, but not otherwise: the birth-day and accession of the Sovereign, Whit-Monday, and Whit-Tuesday.

The several offices of the Court of Chancery are to be opened on every day of the year, except Sundays, Good Friday, Monday and Tuesday in Easter week, Christmas Day, and all days appointed by proclamation to be observed as days of general fast or thanksgiving. *5th Order, 8th May, 1845.* See VACATION.

HOLT, woody highland.

HOLY ORDERS, those who have been admitted and ordained as officials in the Established Church. They consist of archbishops, bishops, priests, and deacons. The ordination must take place according to the form prescribed in the book of Common Prayer. See DEACON.

HOMAGE [*homo*, Lat., a man], the most honourable service of reverence that a free tenant may do to his lord. When a tenant performs it, he is ungirt, and his head uncovered, the lord sitting; the tenant then kneels before him, and holds his hands extended and joined between the hands of his lord, and says thus:—"I become your man from this day forward, of life, and limb, and earthly honour, and to you will be faithful and loyal, and bear you faith, for the tenements that I claim to hold of you (saving the faith that I owe unto our sovereign lord the king): so help me God." The lord then kisses him. Homage can only be done to the lord himself, but fealty may to his steward or bailiff. *Litt.* 85. See COPYHOLD.

HOMAGE ANCESTREL, where a tenant holds lands of his lord by homage; and the same tenant and his ancestors have holden the same land of the same lord and of his ancestors, immemorially, and have done to them homage. *1 Inst.* 100.

HOMAGE JURY, a jury in a court baron, consisting of tenants that do homage, who are to enquire and make presentments of the death of tenants, surrenders, admissions, and the like.

HOMAGER, one who does or is bound to do homage.

HOMAGIO RESPECTUANDO (respecting of homage), a writ to the escheator commanding him to deliver seisin of lands to the heir of the king's tenant, notwithstanding his homage not done. *F. N. B.* 269.

HOMAGIUM REDDERE (to renounce ho-

mage), when a vassal made a solemn declaration of disowning and defying his lord; for which there was a set form and method prescribed by the feudal laws. *Brac.* l. 2, c. 35, § 35.

Homagium, non per procuratores nec per literas fieri potuit, sed in propria personâ tam domini quam tenentis capi debet et fieri. (Co. Lit. 68.—(Homage cannot be done by proxy, nor by letters, but must be paid and received in the proper person, as well of the lord as the tenant.)

Homagium repellit perquisitum. Gilh. 9. 142.—(Homage repels perquisition.)

Home ne serra puny pur suer des briefes en court le roy, soit il a droit ou a tort. 2 Inst. 228.—(A man shall not be punished for suing out writs in the King's Court, whether he has a right or a wrong.)

HOMESOKEN, HOMSOKEN. See HANSECKEN.

HOMESTALL, a mansion house.

HOMICIDE, manquelling; destroying the life of man, in its several stages of guilt, arising from the particular circumstances of mitigation or aggravation which attend it. It is either justifiable, excusable, or felonious.

I. *Justifiable*, of three kinds:—

(a) Where the proper officer executes a criminal in strict conformity with his sentence.

(β) Where an officer of justice, or other person acting in his aid, in the legal exercise of a particular duty, kills a person who resists or prevents him from executing it.

(γ) Where it is committed in prevention of a forcible and atrocious crime. *1 Hale*, 488.

II. *Excusable*, of two kinds:—

(a) *Per infortunium*, or by misadventure; as where a man doing a lawful act, without any intention of hurt, by accident kills another.

(β) *Se defendendo*, as where a man kills another upon a sudden rencounter in his own defence, or in defence of his wife, child, parent, or servant, and not from any vindictive feeling.

III. *Felonious*, of two kinds:—

(a) Killing one's self.

(β) Killing another, which is either—

(1) Murder; or

(2) Manslaughter; and this is either—

(a) Voluntary, where a man doing an unlawful act, not amounting to felony, by accident kills another; or

(β) Involuntary, where, upon a sudden quarrel, two persons fight, and one of them kills the other; or where a man greatly provokes another, by some personal violence, &c., and the other immediately kills him. *4 Bl. Com. chap. xiv.*

Homicidium vel hominis cædium, est hominis occisio ab homine facta. 3 Inst. 54.—(Homicide or slaughter of a man, is the killing of a man, perpetrated by a man.)

HOMINATION, the mustering of men; the doing of homage.

HOMINE CAPTO IN WITHERNAMIIUM, a writ to take him that had taken any bondman or woman, and led him or her out of the country, so that he or she could not be replevied according to law. *Reg. Orig.* 79.

HOMINE ELIGENDO AD CUSTODIENDAM PECIAM SIGILLI PRO MERCATORIBUS EDITI, a writ directed to a corporation for the choice of a man to keep one part of the seal appointed for statutes merchant, when a former is dead, according to the Statute of *Acton-Burnel*. *Reg. Orig.* 178.

HOMINE REPLEGIANDO, a writ to bail a man out of prison. *Reg. Orig.* 77. All these writs are totally disused.

HOMINES, feudatory tenants who claimed a privilege of having their causes, &c., tried only in their lord's court. *Paroch. Antiq.* 152.

HOMIPLAGIUM, the maiming of a man.

HOMOLOGATION, when a man either expressly or impliedly ratifies a deed that formerly was null or invalid. *Scotch Term.*

Homo potest esse habilis et inhabilis diversis temporibus. 5 Co. 98.—(A man may be capable and incapable at divers times.)

Hora non est multum de substantiâ negotiî, licet in spello de eâ aliquando fiat mentio. 1 Buls. 82.—(The hour is not considered of much consequence as to the substance of business, but in appeal let mention of it be sometimes made.)

HOMSTALE, a mansion house.

HOND-HABEND. See **HAND-HABEND.**

HONOR, a seignior of several manors held under one baron or lord paramount; also, those dignities or privileges, degrees of nobility, knighthood, and other titles, which flow from the Crown—the fountain of honor.

HONOR, *Court of*, a branch of the Court of Chivalry. See **CHIVALRY**, *Court of*.

HONOR COURTS, tribunals held within honors or seignories.

HONOR, *Maid of*, ladies in attendance upon the Queen: they are six in number, and receive salaries of 300*l.* each.

HONORABLE, a title of quality attributed to the younger children of earls, and the children of viscounts and barons; to persons enjoying trust and honor; and, collectively, to the House of Commons, and the East India Company.

HONORARY FEUDS, titles of nobility, descendible to the eldest son, in exclusion of all the rest.

HONORARY SERVICES, those incident to grand serjeanty, and commonly annexed to some honor.

HONORIS RESPECTUM, challenges *propter*. See **CHALLENGE**.

HONTFONGENETHEF, or **HONFANGENETHEF**, a thief taken with *hondhabend*, i. e., having the thing stolen in his hand. See **BACKBERINDE**.

HOOKLAND, land ploughed and sown every year. *Scott.*

HOPCON, a valley. *Cowell.*

HORA AURORÆ, the morning bell; as *ignitigium*, or *coverfeu*, was the evening bell.

HORDA, a cow in calf. *Old Records.*

HORDERA, a treasurer.

HORDERIUM, a hoard, treasury, or repository.

HORDEUM PALMALE, beer, barley. *Cowell.*

HORESTI, the people of Angus-upon-the-Tay, or Highlanders.

HORNGELD, or **HORNEGELD**, a forest tax paid for horned beasts.

HORN WITH HORN, or **HORN UNDER HORN**, the promiscuous feeding of bulls and cows, or all horned beasts that are allowed to run together, upon the same common. *Spelm.*

HORNAGIUM. See **HORNGELD**.

HORNING, *Letters of*, warrant for charging persons in Scotland to pay or perform certain debts and duties; probably so called, because they were originally proclaimed by sound of trumpet.

HORS DE SON FEE (out of the fee), where land is without the compass of a person's fee.

HORS-WEALH, the wealth, or Briton who had the care of the king's horses.

HORS-WEARD, a service or corvée, consisting in watching the horses of the lord. *Anc. Inst. Eng.*

HORSE-RACING. By 13 Geo. II., c. 19, no plates or matches at horse-races, under 50*l.* value, could be run, under penalty of 200*l.*, to be paid by the owner of the horse or horses, and 100*l.* by the advertiser of the plate. This was repealed by 3 & 4 Vict., c. 5.

Wagers of above 10*l.* on a horse-race have been held illegal, under 9 Anne, c. 14; but the penalties of that act are now repealed by 8 & 9 Vict., c. 109, § 5.

HORSTILERS, innkeepers.

HOSPES GENERALIS, a great chamberlain.

HOSPITALERS, the knights of a religious order, so called, because they built an hospital at Jerusalem, wherein pilgrims were received. All their lands and goods in England were given to the Sovereign, by 32 Hen. VIII., c. 34.

HOSPITALS, eleemosynary corporations. They are either *aggregate*, in which the master or warden and his brethren have the estate of inheritance, or *sole*, in which the master, &c., only has the estate in him, and the brethren or sisters, having college and common seal in them, must consent, or the master alone has the estate, not having college or common seal. They are either *eligible*, *donative*, or *presentative*.

Any person seised of an estate in fee simple may, by deed enrolled in Chancery, erect and found an hospital for the sustenance and relief of the poor, to continue for ever, and place such heads, &c., therein as he shall think fit; and such hospital shall be incorporated and subject to such visitors, &c., as the founder shall nominate; also, such corporations have power to take and purchase lands, not exceeding 200*l.* per annum, so as the same be not holden of the Crown, and to make leases for twenty-one years, retain-

ing the accustomed yearly rent. But no hospital is to be erected, unless upon the foundation it be endowed with lands or hereditaments of the clear yearly value of 20*l.* per annum, 39 Eliz., c. 5, perpetuated by 21 Jac. I., c. 1, § 1. Any goods and chattels, real or personal, may be taken, of what value soever. See CHARITABLE USES, and CHARITIES.

HOSPITICIDE [*hospes*, Lat., guest, and *cædo*, to kill], one that kills his guest or host.

HOSPITIUM, procuration or visitation money.

HOSTAGE, a person given up to an enemy as a security for the performance of the articles of a treaty; on performance of which the person is to be released.

HOSTELAGIUM, a right to have lodging and entertainment, reserved by lords, in their tenants' houses. *Old Records*.

HOSTELER, or **HOSTLER**, an innkeeper.

HOSTERIUM, a hoe.

Hostes sunt qui nobis vel quibus nos bellum decernimus; cæteri proditores vel prædones sunt. 7 Co. 24.—(Enemies are those with whom we are at war; all others are thieves or pirates.)

HOSTICIDE, one who kills an enemy.

HOSTILARIUS, an hospitaller.

HOSTILARIA, **HOSPITALARIA**, a place or room in religious houses allotted to the use of receiving guests and strangers.

HOSTRICUS, a goshawk.

HOT WATER ORDEAL. This was a test, in cases of accusation, by glowing iron; the party accused and suspected being appointed by the Judge to put his arms up to the elbows in seething hot water, which, after sundry prayers and invocations, he did, and was, by the effect which followed, judged faulty or faultless. *Verst. Rest. Dec. Intel.* 66.

HOTCHPOT [*haché en poche*, Fr., a confused mingling of divers things], a blending or mixing of lands or chattels, answering in some respects to the *collatio bonorum* of the civil law.

As to *lands*, it only applies to such as are given in frank marriage, thus: if one daughter have an estate given with her in frank marriage by her ancestor, then, if lands descend from the same ancestor to her and her sisters in fee-simple (not in fee-tail), she or her heirs shall have no share in them, unless they will agree to divide the lands so given in frank-marriage, in equal proportions with the rest of the lands descending, i. e., bringing her lands so given into hotchpot.

As to *personalty*. The Statute of Distributions intended children to take equal shares of their ancestor's intestate goods and chattels, and it considers that there may be some of the children who have received a portion or advancement before, but not so much as to take up their full share; in that case, such child so advanced but in part, is allowed so much more out of the intestate's personal estate as will suffice to make his

share equal to that of the other children. The act takes nothing away that has been given to any of the children, however unequal that may have been. How much soever that may exceed the remainder of the personal estate left by the intestate at his death, the child may, if he please, keep it all; if he be not content, but would have more, then he must bring into hotchpot what he has before received. This principle is based upon the equitable doctrine of equality, for it is perfectly coincident with that conduct which a good and just parent would pursue towards all his children.

HOUSAGE, a fee paid for housing goods by a carrier.

HOUSEBOTE, estovers or an allowance of necessary timber out of the lord's wood, for the repairing or support of a house or tent.

HOUSE-BREAKING. See BURGLARY.

HOUSE-BURNING. See ARSON.

HOUSE OF COMMONS, one of the constituent parts of Parliament, being the assembly of knights of shires or the representatives of counties; citizens, or the representatives of cities; and burgesses, or the representatives of boroughs.

The following is a statement of the entire representation of the three kingdoms, composing the House of Commons:

ENGLAND AND WALES—

159 knights of shires,

341 citizens and burgesses.

—
Total 500

Deduct 2 for Sudbury in Suffolk,—disfranchised on account of its corruption.

—
498

SCOTLAND—

30 knights of shires,

23 citizens and burgesses.

—
Total 53

IRELAND—

64 knights of shires,

41 citizens and burgesses.

—
Total 105

Total of the United Kingdom, excluding Sudbury, 656.

To be eligible as a member of a county, the qualification is 600*l.* a year, arising either from real or personal property, or both; as a citizen or burgess, one half of the above qualification. Members of the Universities of Oxford, Cambridge, and Trinity College, Dublin, eldest sons or heirs apparent of peers or of persons qualified to be knights of the shire, require no qualification. In Scotland, no qualification is established.

Aliens are not eligible as members, neither are minors, lunatics, English or Scotch peers; but Irish peers, unless representative, may sit for any place in Great Britain. The English, Scotch, and Irish Judges (except

the Master of the Rolls in England, when not a peer), are disqualified. Also the holders of various offices particularized by statute, Government contractors, clergymen, and bankrupts. 1 *Bl. Com.* 146.

HOUSE OF CORRECTION, a species of gaol which does not fall under the sheriff's charge, but is governed by a keeper, wholly independent of that officer.

Houses of Correction, first established in the reign of Elizabeth, were originally designed for the penal confinement (after conviction) of paupers and vagrants refusing to work; but by 5 & 6 Wm. IV., c. 38, § 34, reciting that great inconvenience and expense had been found to result from the practice of committing to the common gaol, where it happens to be remote from the place of trial, it is enacted, that a justice of the peace, or coroner, may commit for safe custody, to any house of correction situate near the place where the assizes or sessions are to be held; and that offenders sentenced in those courts to death, transportation, or imprisonment, may be committed, in execution of such sentence, to any house of correction for the county. 3 *Step. Com.* 250.

HOUSE OF LORDS, a constituent part of Parliament, being composed of the Lords Spiritual and Temporal.

Archbishops and bishops held a prominent place in the great Saxon council, and under the Norman Kings they still retained it. They have always had a seat in the House of Lords, but by what right is not agreed upon. In the Saxon times there is no doubt that they sat as bishops, by virtue of their ecclesiastical office; but it is said that "William the Conqueror thought proper to change the spiritual tenure of frank-almoign or free-alms, by virtue of which the bishops held their lands under the Saxon government, into the feudal or Norman tenure by barony, and in right of succession to those baronies, which were unalienable from their respective dignities, the bishops and abbots were allowed their seats in the House of Lords." (1 *Bl. Com.* 156.) Mr. Hallam thinks this view of the rights of the English hierarchy too contracted, and maintains that the bishops of William the Conqueror were entitled to sit in his councils by the general custom of Europe, which invited the superior ecclesiastics to such offices, and by the common law of England, which the Conqueror did not overturn. (*Middle Ages*, vol. iii., p. 6.) Another view of the question is, that the abbots only had a seat in Parliament solely by virtue of their tenures as barons; but that the bishops sat in another capacity, as bishops and as barons. (*Hody's Treat. on Convocations*, 126.) Their presence in Parliament, however, has been uninterrupted, whatever changes may have been effected in the nature of their tenure.

The lords temporal are divided into dukes, marquesses, earls, viscounts, and barons. The number of British peerages of different ranks has been greatly augmented from time

to time, and there is no limitation to the power of the Crown to add to it by fresh creation. The following table will show pretty correctly the present number of each class:—

Lords spiritual:

2 archbishops (Canterbury and York),
24 English bishops,
4 Irish representative bishops.

—
Total 30.

Lords temporal:

2 dukes of the royal blood,
21 dukes,
120 marquesses,
114 earls,
20 viscounts,
215 barons,
16 representative peers of Scotland,
28 representative peers of Ireland.

—
Total 436.

The House of Lords is the Supreme Court of Judicature in the kingdom, the appeal tribunal in the last resort, having no original jurisdiction over causes, but only upon appeals and writs of error, to rectify any injustice or mistake of the law, committed by the courts below. As to Scottish appeals, see 4 Geo. IV., c. 85; and Irish appeals, 39 & 40 Geo. III., c. 67, art. 8.

The following are exceptions to the rule: an appeal from the Court of Stannaries in Cornwall, is to the Warden of the Stannaries, and from him to the Privy Council of the Prince of Wales, as Duke of Cornwall; and if there be no Prince of Wales, it is to the Queen in Council.

An appeal from the decision of the Vice Chancellor of Lancaster is to the Chancellor of the Duchy Court at Westminster.

An appeal from the Lord Chancellor in idiocy or lunacy is to the Queen in Council.

An appeal from the Ecclesiastical, Maritime, or Prize Courts in England, and from the courts in Man, Jersey, Guernsey, Sark, Alderney, or from the colonies, is to the Queen in Council.

An appeal from a court martial is to the Queen in person.

In the text-books and reports, the abbreviation *D. P.*, or *Dom. Proc.* is met with. It means a case decided by the House of Lords; both of these abbreviations standing for *Domus Procerum*, the House of Lords.

HOUSE TAX, an assessed tax, which was abolished by 4 & 5 Wm. IV., c. 19.

HOUSEHOLDER [*pater familias*], an occupier of a house; a master of a family.

HREDIGE, readily, quickly.

HUDEGELD. See **HIDGELD**.

HUE AND CRY [*huer*, Fr., to shout, crier, to cry aloud]. *Hue* is a party's complaint, and *cry* the pursuit of a felon. It is raised upon a felony committed, and is a species of arrest wherein both officers and private men are concerned. If, in a hue and cry, the constable or peace officer concur in the pursuit, he has the same powers, protection,

and indemnification, as if acting under a magistrate's warrant. Indeed, all those who join in following upon a hue and cry that has been raised, and that whether a constable be present or not, will be justified in the apprehension of the party pursued, even though it should ultimately turn out that he is innocent, or that no felony has been committed; and where the party pursued has taken refuge in a house, may break open the door to secure him, if admittance be refused. But if a man wantonly or maliciously raise a hue and cry without cause, he is liable to fine and imprisonment, and also liable to an action at the suit of the party injured. The 7 Geo. IV., c. 64, § 28, provides for compensation and expenses in such cases, in order to encourage the apprehension of felons. 4 *Step. Com.* 360. As to the mode of raising the hue and cry, see *Haw.*, l. ii., c. 12, § 6.

HUISSERIUM, a ship used to transport horses. Also termed *uffer*.

HUISSIER, an usher of a court.

HULKA, a hulk, or small vessel.

HULLUS, a hill.

HUMAGIUM, a moist place.

HUNDRED, a subdivision of the country, the nature of which is not known with certainty. In the *Dialogus de Scaccario*, it is said that a hundred "*ex hydarum aliquot centenariis, sed non determinatis constat; quidam enim ex pluribus, quidam ex paucioribus constat.*" Some accounts make it consist of precisely a hundred hides; others, of a hundred tithings, or of a hundred free families. Certain it is, that whatever may have been its original organization, the hundred, at the period when it became known to us, differed greatly as to extent in the several parts of England. This division is ascribed to King Alfred, and he may possibly have introduced it into England, though in Germany it dates from a very remote period, where it was established among the Franks in the sixth century. In the capitularies of Charlemagne we meet with it in the form known among us. *Capit. l. 3, c. 10.*

To Alfred's claim, as the author of this division in England, it may be objected that the hundred is named in the Penitential of Egbert; but this objection is not fatal; it is there mentioned in the rubric only, to which it seems attached as an afterthought, and does not appear in the text, between which and the rubric there is little accordancy; and, moreover, it is evident from its dialect, that the Penitential has not reached us in its original state, being bereft of every vestige of its Northumbrian origin, and, in its present dress, is most probably much later than the time of Alfred. See *Domesday*, vol. i. p. 185; 1 *Step. Com.* 117.

HUNDRED COURT, a larger court baron, being held for all the inhabitants of a particular hundred, instead of a manor. The free suitors are here also the Judges, and the steward the registrar, as in the case of a court baron. It is not a court of record:

it resembles a court baron in all points, except that in point of territory it is of a greater jurisdiction. It was denominated *hæredu* in the Gothic constitution. Causes are removed by the same writs as from a court baron, and its proceedings may be reviewed by writ of false judgment. The court is become obsolete.

HUNDRED-LAGH, or **HUNDRED-LAW** a hundred court.

HUNDRED PENNY, the *hundredfeh*, or tax collected by the sheriff or lord of an hundred.

HUNDRED-FECTA, the performance of suit and service at the hundred court.

HUNDRED-FETENA, dwellers or inhabitants of a hundred.

HUNDREDES EALDOR, **HUNDREDES MAN** [*aldermannus hundreti*], the presiding officer in the hundred court. *Anc. Hist. Eng.*

HUNDREDORS, men of a hundred; persons serving on juries, or fit to be empanelled thereon for trials, dwelling within the hundred where the cause of action arose.

The statute now in force, by which hundredors are liable for damages done by rioters, is the 7 & 8 Geo. IV., c. 31. The 7 & 8 Geo. IV., c. 27, repeals all the prior statutes relative to such liability. Hundredors are now no longer, as formerly, liable in cases of robbery, arson, killing or maiming cattle, cutting down or destroying trees, destroying turnpikes or works on navigable rivers, cutting hop vines, destroying corn to prevent it being exported, destroying corn going to market, or injuring horses or carriages so conveying it, and wounding revenue officers; they are, in short, only now liable for damage done by rioters acting feloniously. A plaintiff cannot proceed by action, unless his loss exceed 30*l.*; for a loss amounting to that sum or under, his remedy is by summary proceedings before justices at a special petty sessions. Previously to the commencement of an action, the plaintiff or his servant having the care of the property injured, must, within seven days after the commission of the offence, go before some near resident justice, and state on his oath the names of the offenders, and submit to an examination, and enter into a recognizance to prosecute. This examination must take place within seven days, exclusively of the day on which the offence was committed, the action must be brought within two years after the offence committed. 5 & 6 Vict., c. 97, § 5. The writ should be served upon the high constable or one of the high constables of the hundred, who should, within seven days after service, give notice of it to two justices residing near and acting for the hundred. Any of the hundredors are competent witnesses on the trial. The mode of execution is provided for by the 6th sec. of 7 & 8 Geo. IV., c. 31.

HURDLE, a sledge used to draw traitors to execution.

HURDEREFERST, a domestic; one of a family.

HURST, HYRST, HERST, a wood or grove of trees.

HURTARDUS, HURTUS, a ram, or wether.

HUSBAND AND WIFE [*baron and feme*], one of the greatest relationships of private life effected by marriage, by which the legal existence of a wife is incorporated with that of her husband.

The *common law* treats them, for most purposes, as one person, therefore a husband cannot make a grant to his wife at the common law, but he may do so (1), under the Statute of Uses, by granting an estate to another person for her use; (2), by creating a trust in her favour; (3), by the custom of particular places; (4), by surrendering copyholds to her use; and (5), by will. If an estate be limited to them, they do not take as joint tenants, but the entirety is in each; neither can alien to the other.

The custody of the wife's person belongs of right to her husband; but if he, by ill-usage or threat, place her life or person in danger, she may obtain sureties to keep the peace either from a justice of the peace, the Sessions, the Court of Queen's Bench, or the Lord Chancellor, by articles of the peace and supplicavit. She may obtain an *habeas corpus*, at her own instance, if under improper restraint, though not at the instance of others, to enable her to make a will or an appointment of her property. If a wife be taken away or harboured, she may be retaken, or the husband may issue an *habeas corpus*, or bring an action for her detention. He may justify the defence of his wife by force; and when her life or person is endangered, he may even kill the assailant. If he were to detect any one in crim. con. with her, *flagrante delicto*, his instant killing him would, at most, but constitute manslaughter.

As to the wife's property, her freeholds are vested in the both, during coverture, in right of the wife, and during their joint lives the husband is entitled to the profits, and has the sole control and management, but cannot convey or charge the lands for any longer period than while his own interest continues. But by 32 Hen. VIII., c. 28, husbands may make leases of the lands, tenements, or hereditaments, whereof they have any estate or inheritance in fee-simple or fee-tail in right of their wives, so as there be observed in such leases the conditions or limitations required in leases made by tenants in tail (2 *Bl. Com.* 319); and so that the wife join in the same deed, and be made party thereunto, and seal and deliver the same deed herself in person. Such a lease binds husband and wife both, and the heirs of the wife (including her issue); but if it be of an estate-tail, it does not bind the donor, i. e., the reversioner, nor him in remainder. If a lease be made to a husband and wife, the wife cannot disagree to it during the husband's life, and if she acquiesce after his death, she will be liable for all arrears of

rent which accrued during his lifetime; but it is said, however, that if there be any special covenants inserted in the lease, she is not bound by them after her husband's death, although she continue tenant by force of the demise. *Woodf. Land. and Tent.* 38, 141.

As to terms for years and other chattels real, of which the wife is possessed at the time of marriage, or which accrue to her during coverture, except they be held in *autre droit* as executrix, the husband becomes possessed of them in his own right; he may dispose of them as he pleases, by any act during coverture, but not by will. If he survive her they are absolutely his. If she survive him they go to her, provided he had made no disposition of them in his lifetime. Her personal chattels, except those in *autre droit*, become the absolute property of the husband; and also her choses in action, provided he recover them by law or reduce them into possession in his lifetime, otherwise they remain to the wife.

The general rule is that a husband is not bound by his wife's contracts, unless they are made by his authority, express or implied. If any articles are supplied to the wife which are not necessities, the legal presumption is, that the husband did not assent to his wife's contract; but it is contrariwise if they be necessities. Any person furnishing a married woman with articles, therefore, is bound, at his peril, to ascertain whether they are necessities, and whether she is acting under her husband's authority, for a husband is not liable on the wife's contracts, if the subjects of them are beyond his station and circumstances in society, unless by his express consent. Where a separation has ensued in consequence of the wife's adultery, whether it be by a decree of divorce, or by the voluntary elopement of the wife, or by expulsion from her husband's house, he is not responsible even for the necessities of life furnished to her. So if a wife elope without her husband's consent, though it be not in an adulterous manner, but without sufficient cause; so if they be separated, provided the husband prove the adequacy of his allowance to her and the due payment of it, otherwise, in this case, he would be liable. *Story on Contracts*, 46.

As to actions, wherever their cause would survive to the wife, she and her husband ought to join in suing; but where they arise during coverture, the husband may sue alone or jointly with his wife. In bringing actions against husband and wife, the general rule is, that whenever the cause of action would survive against the wife, they ought to be sued jointly. *Chit. Arch. Prac.* 895.

In the *civil law* (Roman) the husband and wife are considered as two distinct persons, and may have separate estates, contracts, debts, and injuries; and may also, by agreement with each other, have a community of interest in the nature of a partnership.

In courts of *equity*, although the prin-

ciples of law as to husband and wife are fully recognized and enforced in proper cases, yet they are not exclusively considered. On the contrary, equity, for many purposes, treats the husband and wife, as the civil law treats them, as distinct persons, capable (in a limited sense) of contracting with each other, of suing each other, and of having separate estates, debts, and interests. A wife may, in a court of equity, sue her husband, and be sued by him. And in cases respecting her separate estate, she may also be sued without him; although he is ordinarily required to be joined for the sake of conformity to the rule of law, as a nominal party, whenever he is within the jurisdiction of the court, and can be made a party.

Courts of equity, will, in special cases, in furtherance of the manifest intentions and objects of the parties, carry into effect a contract made before marriage between husband and wife, although it would be avoided at law. An agreement, therefore, entered into by husband and wife before marriage, for the mutual settlement of their estates, or of the estate of either upon the other, upon the marriage, even without the intervention of trustees, will be enforced in equity, although void at law; for equity will not suffer the intention of the parties to be defeated by the very act which is designed to give effect to such a contract. Even at law a bond given by a husband to his intended wife, upon a condition not to be performed in his lifetime (as for instance, to leave her at his death 1000*l.*), would not be extinguished by the inter-marriage; for marriage extinguishes such contracts only as are for debts or things which are due *in presenti* or *in futuro*, or upon a contingency, which may occur during the coverture. But where the debt or thing cannot be due until after the coverture is dissolved, the contract is only suspended and not extinguished during the coverture. *A fortiori*, such an agreement would be specifically decreed in equity. In regard to contracts made between husband and wife after marriage, *à fortiori*, the principles of the common law apply to pronounce them a mere nullity; yet, although *æquitas sequitur legem*, it will under particular circumstances, give full effect and validity to post-nuptial contracts. And a wife may become a creditor of her husband by acts and contracts during marriage; and her rights, as such, will be enforced against him and his representatives.

It is well known that the strict rules of the old common law would not permit a wife to take or enjoy any real or personal estate separate from or independent of her husband; and although these rules have been in some degree relaxed and modified in modern times, yet they have still a very comprehensive influence and operation at law. On the other hand, courts of equity have, for a great length of time, admitted the doctrine that a married woman is capable of taking real and personal estate to her own

separate and exclusive use, and that she has also an incidental power of disposition over it. This may be effected by marriage articles, or by an actual settlement before marriage. And although, in strict propriety, the separate and exclusive use should be vested in trustees for her benefit (and this is usually done in regular and well considered settlements), yet it has for more than a century been established in equity, that the intervention of trustees is not indispensable, and that whenever real or personal property is given, devised, or settled upon a wife, either before or after marriage, for her *separate* and exclusive use, without the intervention of trustees, the intention of the parties shall be effectuated, and the wife's interest protected against the marital rights and claims of her husband. In all such cases the husband will be held to be a mere trustee for her. Wherever a trust is created, or a power is reserved by a settlement, to enable a wife after marriage to dispose of her separate property, either real or personal, it may be executed by her in the very manner provided for, whether it be by deed or other writing, or by a will or appointment.

The principal, if not the sole, cases in which equity will interfere to secure to a wife her equity to a settlement, are (1), where a husband seeks aid or relief from a court of equity in regard to her property; (2), where he makes an assignment of her equitable interests; (3), where she seeks the like relief, as plaintiff against her husband or his assignees, in regard to her equitable interests. But if a wife be already amply provided for under a prior settlement, the very motive and ground for the interference of equity in her favour is removed. And her equity to a settlement may be lost or suspended by her own misconduct. 2 *Story's Eq. Jurisp.* 546; *Roper on Husband and Wife*.

A wife, if her husband is banished, or has abjured the realm, or has been transported for felony, may, both at law and in equity, maintain a suit in her own name as a *feme sole*, otherwise the husband must join in the suit. But, in equity, if a wife claim some rights in opposition to those claimed by her husband, and it becomes proper to vindicate her rights against him, a bill is filed for her by her next friend, with her consent. The husband may also, in certain cases, sue the wife. Generally, a wife must be joined with her husband as a defendant in a suit. *Story's Eq. Plead.* 61.

As to *criminal* law, if a wife commit a felony in her husband's presence, the law presumes that she acted under his immediate coercion, and excuses her from punishment, which presumption, however, may be rebutted by evidence; but if in the absence of her husband she commit an offence—even by his order or procurement—her coverture will be no excuse. Such a protection is not allowed in crimes which are *mala in se*, and prohibited by the law of nature, nor in such as are heinous in their character, or danger-

ous in their consequences; and therefore, if a married woman be guilty of treason, murder, or homicide, in company with and by coercion of her husband, she is punishable equally as if she were sole. A wife may, generally, be found guilty with her husband in all misdemeanours. But husband and wife cannot alone be found guilty of a conspiracy, because they are deemed to be one person in law, and are presumed to have but one will. If a wife incite her husband to the commission of a felony, she is an accessory before the fact; but she cannot be treated as an accessory for receiving her husband, knowing that he has committed a felony. 1 *Hale*, 45; 1 *Hawk. c.* 1, §§ 9, 10, 11, 12; 1 *Russ.* 20.

The law of evidence on this subject may be thus epitomized:—

Husband and wife cannot be witnesses against each other in any criminal proceeding, as it might be the means of implacable discord and dissension between them, besides operating against a principle of public policy, that they shall not furnish any evidence tending to criminate each other.

They cannot be witnesses for each other. Lord Hardwicke would not suffer a wife to be a witness, though her husband consented; "the rule," he said, "is for the peace of families, and such consent should never be encouraged."

The following are exceptions to these two rules:—

(1) If a woman be taken away by force and married, she may be a witness against her husband, indicted on 3 Hen. VII., c. 2, for she is not a wife *de jure*, a contract obtained by force having no obligation in law.

(2) On an indictment for a second marriage during the continuance of a former marriage, though the first wife or husband cannot be a witness, yet the second wife or husband may, after the proof of the first marriage.

(3) A wife may be witness against her husband for an offence committed against her person.

(4) Where a wife has made contracts with the authority and consent of her husband, she has been considered his agent for that purpose, and her representations are evidence against the husband, who has permitted her to contract for him with third persons.

(5) By 6 Geo. IV., c. 16, § 37, it shall be lawful for the commissioners in bankruptcy to summon before them the wife of any bankrupt, and to examine her for the finding out and discovery of the estate, goods, and chattels of such bankrupt, concealed, kept, or disposed of by such wife, in her own person or by her act, or by any other person; and she shall incur such danger or penalty for not coming before the commissioners, or for refusing to be sworn or examined, or refusing to sign or subscribe her examination, or for not fully answering to the satisfaction of the commissioners, as is

thereby provided against other persons. She cannot, however, be examined as to her husband's bankruptcy.

(6) Upon an appeal against an order of bastardy, in the case of a married woman, Lord Hardwicke and the other Judges held that she was a competent witness to prove her criminal connection with the appellant, though her husband was interested both in the question and in the event of the appeal; because such a fact, so secret in its nature, can scarce ever be proved by other evidence.

(7) A wife may be a witness in an action between third persons not immediately affecting her husband's interest, though her evidence may possibly expose him to a legal demand. 1 *Phil. Evid.* 76, *et seq.*

HUSBANDRY, farming: a man devoted to this pursuit is not to be called a farmer, but a husbandman.

HUSBRECE, burglary.

HUSCARLE, a menial servant. *Domesday.*

HUSFASTNE, he who holds house and land.

HUSGABLE, house rent or tax.

HUSH-MONEY, a bribe to hinder information; pay to secure silence.

HUSTING [*hus-thing*, A. S.], council, court, tribunal; apparently so called from it being held within a building, at a time when other courts were held in the open air. It was a local court. The county court in the city of London bears this name. There were hustings at York, Winchester, Lincoln, and in other places, similar to the London hustings. *Madox Hist. Eccl.*, c. 20.

In these courts certain documents are enrolled, outlawries proclaimed, &c., and the elections of officers and parliamentary representatives take place. The place raised, from which candidates for members of Parliament address the constituency, is called hustings.

HUTESIUM ET CLAMOR, hue and cry.

HUTILAN, taxes.

HWATA, HWATUNG, augury, divination. *Anc. Hist. Eng.*

HYBERNAGIUM, the season for sowing winter corn between Michaelmas and Christmas.

HYD, hide, skin. See HIDE-GILD.

HYD, a measure of land, containing at present a hundred acres, which quantity is also assigned to it in the *Dialogus de Scaccarii*. It seems, however, that the hide varied in different parts of the kingdom. See HIDE OF LAND.

HYNDEN, an association of ten men, first mentioned in *In.* 54, where it signifies the persons from among whom the consacramentals were to be chosen in the case of deadly feud. From *Ath.* V. iii. it appears that the members of the 'firth-gilds' (*con-gildones*) were formed into associations of ten, the enactment running thus:—"That we count ten men together, and let the senior direct the nine in all those things that are to be done; and then let them count their hyndens together, with one hyndenman who shall admonish the ten (i. e., the ten hyndens) for our common benefit."

Hence it would seem that the eleven who are to hold the money, consisted of the senior of each hynden together with the hynden-man, who presided over the hynden of the hydens, i. e., ten hydens. The number XII., mentioned in Ath. V. viii. 1, is apparently an error for XI. *Anc. Inst. Eng.*

HYPOTHECATION, a pledge without possession by the pledgee.

There are few cases, if any, in our law where an hypothecation, in the strict sense of the Roman law, exists. The nearest approaches, perhaps, are the cases of holders of bottomry bonds, of material-men, and of seamen for wages in the merchants' service, who have a claim against the ship *in rem*. But these are rather cases of liens or privileges than strict hypothecations. There are also cases where mortgages of chattels are held valid, without any actual possession by the mortgagee, but they stand upon very peculiar grounds, and may be deemed exceptions to the general rule.

HYRNES [*parochia*], parish.

HYSTEROPOTMOI [Greek], such as had been thought dead, and after a long absence in foreign countries returned safely home; or such as had been thought dead in battle, and afterwards unexpectedly escaped from their enemies and returned home. These, among the Romans, were not permitted to enter their own houses at the door, but were received at a passage opened in the roof. *Encyc. Lond.*

HYSTEROTOMY [*ὥστέπα*, Gk., the womb, and *τόμος*, a section], the Cæsarian operation.

HYTHE, a port or little haven at which to lade or unlade wares.

I

IBERNAGIUM [*hibernagium*], the season for sowing winter corn. *Cart. Antiq. MSS.*

Ibi semper debet fieri triatio, ubi juratores meliorem possunt habere notitiam. 7 Co. 1.—(A trial should always be had where the jury can get the best information.)

ICENI, the ancient name for the people of Suffolk, Norfolk, Cambridgeshire, and Huntingdonshire.

ICH DIEN (I serve), a motto belonging to the Prince of Wales, first assumed by Edward the Black Prince, after he had slain John, King of Bohemia, at Cressy, whose motto it was originally. The Black Prince assumed it to show his subjection to his father, Edward III.

ICONA, a figure or representation of a thing.

ICTUS ORBUS, a maim, bruise, or swelling.

Id certum est quod certum reddi potest; sed id magis certum est quod de semet ipso est certum.

9 Co. 47.—(That is certain which can be reduced to a certainty, but that is most certain which is certain on the face of it.)

Idem agens et patiens esse non potest. Jenk. Cent. 40.—(The same person cannot be both the agent and patient.)

Idem est facere et non prohibere cum possis et

qui non prohibet cum prohibere possit in culpa est. 3 Inst. 158.—(To commit and not prohibit, when in your power, is the same thing; and he who does not prohibit when he can prohibit, is in fault.)

Idem est nihil dicere et insufficienter dicere. 2 Inst. 178.—(It is the same thing to say nothing, and not to say sufficiently.)

Idem est non esse et non apparere. Jenk. Cent. 207.—(Not to be and not to appear are the same.)

Idem semper antecedenti proximo refertur. Co. Lit. 385.—(The same is always referred to its next antecedent.)

IDEM SONANS (sounding like). The courts will not interfere in setting aside proceedings on account of the mis-spelling of names, provided the variance is so trifling as not to mislead, or there is an *idem sonans* between the pronunciation of the right name and that which is inserted in the proceedings; as Lawrance, instead of Lawrence, Reynell for Reynolds, Beniditto for Benedetto. 1 *Crompt. & M.* 806; 1 *Chit. R.* 659; 6 *Price*, 2; 2 *Taunt.* 401.

Identitas vera colligitur ex multitudine signorum. Bacon.—(The true identity is collected from the number of signs.)

IDENTITATE NOMINIS, an ancient and obsolete writ that lay for one taken and arrested in any personal action, and committed to prison for another man of the same name. *F. N. B.* 267.

IDENTITY OF PERSON. Cases have not unfrequently arisen, both in civil and criminal courts, where the question at issue has been, whether the individual be really the person whom he pretends or states himself to be. When such cases present themselves, the difference of opinion that exists will generally be of such a nature as to render the duty of the court trying and difficult. This subject is calculated to excite attention, to awaken discussion, and to cause great positiveness of opinion on one or the other side. An examination of these cases will lead to the conclusion that considerable importance should be attached to physical signs. In all disputed cases, recommends Foderé, we should particularly notice mature formations or congenital marks. These cannot be removed. All wounds also of the soft parts leave marks of their existence. Scrofulous ulcers have their cicatrices; small-pox and burns have their marks. All peculiarities of physiognomy, profession, or trade, should be noted. *Beck's Med. Juris.* 104.

IDES [*iduate*, obs., to divide], a division of time among the Romans. In March, May, July, and October, the Ides were on the 15th of the month, in the remaining months, on the 13th. *Kenn. Antiq.* This method of reckoning is still retained in the Chancery of Rome, and in the calendar of the breviary.

IDIOTS AND LUNATICS, persons incapable of contracting and transacting the ordinary business of life.

The administration of idiots and lunatics' estates is, in virtue of a *personal* authority

given by the Crown, viz., a special commission under a warrant of the Queen's sign manual, countersigned by the Lords of the Treasury, not directed to the Court of Chancery, but to a certain great officer of the Crown, not of necessity the person who has the custody of the Great Seal, though it generally attends him by a warrant from the Crown, in which it is stated to be given to him in consideration of its being his duty as Chancellor to issue the commissions on which the enquiry as to the facts of idiotcy or lunacy is to be obtained. It is said that the warrant confers no jurisdiction, but only a power of administration.

The rules of equity and law are the same as to what amounts to insanity.

Insanity, in its ordinary acceptation, may be divided into—1. Mania, in which the hallucination extends to all kinds of objects, and is accompanied with some excitement. 2. Monomania, or melancholy, in which the hallucination is confined to a single object, or to a few objects. 3. Dementia, wherein the person is rendered incapable of reasoning, in consequence of functional disorder of the brain, not congenital (i. e., not born with the person). 4. Idiotism, congenital, from original mal-conformation in the organ of thought.

The ancient theory on the subject of lunacy was this:—the patient became insane, as was supposed, at particular changes of the moon, and the inference was natural, that, in the intervening spaces of time, he would be rational. This is an opinion, however, long since abandoned. "*Lunatic*," observes Lord Hardwicke, "is a technical word, coined in more ignorant times, as imagining these persons were affected by the moon; but it is discovered by philosophy and ingenious men, that it is entirely owing to a defect of the organs of the body."

For lunatics the Crown is but a trustee, but in the case of an idiot the Crown is absolutely entitled to the profits, subject to the idiot's maintenance; but persons are seldom found idiots, but only *non compos mentis*; and even when they are found idiots the Crown very rarely claims that interest in their property, to which it is legally entitled.

A lunatic is never looked upon, in the view of the law, to be desperate, but always at least in a possibility of recovering.

It is exceedingly difficult to pronounce upon the lunacy of an individual, where, instead of being marked and excessive, it is cunningly present in his mind. It is very difficult to pronounce upon the precise point at which mental health ceases, and uncontrollable impulse begins, or in determining that which arises from violent temper or excessive passion, and what indicates a diseased obliquity of the volition and understanding. For what can be more assimilated than the anger of the sane and the insane? What more alike than the maniac and the habitually passionate—between the melan-

cholic and the accustomed brooder over his malignant and revengeful conceptions?

As to the nature and duration of a lucid interval:—

"It must not be a superficial tranquillity, a shadow of repose, but, on the contrary, a profound tranquillity, a real repose; it must be not a mere ray of reason, which only makes its absence more apparent when it is gone—not a flash of lightning, which pierces through the darkness only to render it more gloomy and dismal—not a glimmering which unites the night to the day; but a perfect light, a lively and continued lustre, a full and entire day, interposed between the two separate nights of the fury which precedes and follows it: and, to use another image, it is not a deceitful and faithless stillness which follows or forbodes a storm, but a sure and steadfast tranquillity for a time, a real calm, a perfect serenity; in fine, without looking for so many metaphors to represent our idea, it must be not a mere diminution, a remission of the complaint, but a kind of temporary cure, an intermission so clearly marked, as in every respect to resemble the restoration of health: so much for its nature.

"And as it is impossible to judge in a moment of the quality of an interval, it is requisite that there should be a sufficient length of time for giving a perfect assurance of the temporary re-establishment of reason, which it is not possible to define in general, and which depends upon the different kinds of fury; but it is certain that there must be a time, and a considerable time: so much for its duration." *D'Aguesseau*.

When the question is of a fact done *lucido intervallo*, which may be either by remission or intermission of the disease, it is not enough to show that the act was *actus sapienti convenienti*, for that may happen many ways; but it must be proved to be *actus sapientis*, and to proceed from judgment and deliberation, otherwise the presumption continues.

The first proceeding to obtain a commission of lunacy is to present a petition to the Lord Chancellor, stating the party's incapacity, and praying a commission, accompanied with affidavits evincing the lunacy of the party. On this petition and affidavit a commission will be issued under the Great Seal.

The Lord Chancellor has a *discretion* in granting the commission; for, as Lord Eldon observed, "there may be cases where the granting a commission may for ever prevent a cure." *Ex parte Tomlinson*, 18 Ves. 58.

By the first section of 5 & 6 Vict., c. 84, "all commissions in the nature of writs *de lunatico inquirendo*, shall be addressed to the two commissioners (who were appointed, in the Gazette of Friday, October 21, 1842, under the authority of this act), or one of them; and that such commissioners shall hold their offices during good behaviour, and shall, jointly and severally, have, perform, and execute all the powers, duties, and authorities which were had, performed,

and executed by commissioners named in commissions, in the nature of writs *de lunatico inquirendo*," before the tenth day of Michaelmas Term, 1842.

The new lunacy orders, promulgated on the 27th October, 1842, made in pursuance of the above-named act, have effected the following alterations:—

The first order abolishes the office of clerk of the custodies of idiots and lunatics.

That all enquiries and matters connected with the persons and estates of lunatics, which used to be referred to the Masters in Ordinary (*except* inquiries under 1 Wm. IV., c. 65, for amending the laws respecting conveyances and transfers of estates and funds vested in trustees and mortgagees, and for enabling courts of equity to give effect to their decrees and orders in certain cases), be hereafter referred to the commissioners of lunacy: that all enquiries pending before any of the Masters at the time these orders came into operation, be transferred to the commissioners, and also all deeds, wills, securities, papers, and documents, in any lunacy then left or deposited in the offices of the Masters, be delivered to them (Orders 2, 3, 4).

That the commissioners' clerks do take the same fees as were received by the Masters' clerks, for the like business (Order 5).

That all acts, deeds, matters, and things theretofore done in the office of clerk of the custodies, be done by the commissioners (that is to say)—

Bonds and recognizances of committees, and their sureties; and the vacating and delivering up the same.

The bill for the grant of the custody, and for the revocation thereof.

Summoning committees and sureties to account.

Filing and copying committees' accounts, and certifying the same.

And that the commissioners' clerks receive the like fees to those theretofore received in the office of clerk of the custodies for the like business, under the foregoing order (Orders 6 & 7).

That all other acts, deeds, matters, and things theretofore done in the office of clerk of the custodies, be (so far as the same are necessary) done by the secretary of lunatics, he receiving the like fees for the like business, as did the clerk of the custodies (Order 8).

The matter of each lunacy shall, for the purpose of the enquiries by these orders authorised, be considered as referred to the commissioners in lunacy from the date of the inquisition (Order 9).

The tenth Order provides, that where any person has been or may be found lunatic under any commission, the commissioner do, from time to time, and without any special order in such matter, enquire and report who is or are the heir or heirs-at-law and next of kin of the lunatic, and the person or persons who would be entitled to his estate,

or to shares thereof, under the statutes for the distribution of intestates' estates, in case he were, at the date of such enquiry, dead intestate, to whom due notice of attending the court is to be given; and also enquire and report what is the situation of the lunatic, and the nature of the lunacy, and who is or are the most fit and proper person or persons to be appointed the committee or committees of the person and estate of the lunatic, and of what the fortune of the lunatic did, at the time from which he shall have been found lunatic, consist, and of what it consists at the time of such enquiry, and what is the amount of income arising therefrom, and in what manner and at what expense, and by whom and where the lunatic has been maintained, and whether anything and what is due, and to whom, in respect of such past maintenance, and to whom and out of what fund the same ought to be paid, and what is fit and proper to be allowed for the maintenance and support of the lunatic for the time past and to come, regard being had to the circumstances and estate of the lunatic, and from what time such allowance should commence.

That the commissioner, immediately after inquisition, and without any special order, shall be at liberty to make inquiry, and to report, whenever necessary, upon the provisional care and management of the lunatic and his property, and as to maintenance, until committees be appointed: and also, by certificate under his hand, to enlarge, from time to time, the period within which any person approved of as committee of the estate of any lunatic ought to complete his security; and to receive any proposal, or to conduct any enquiry as to the managing, settling, or letting the estate, or otherwise, respecting the person or property of any lunatic, and may report thereon as he may deem fit; but such report shall be submitted for confirmation, as is now done with respect to such reports when made upon special reference (Orders 11, 12, & 13).

It shall not be necessary for the committee, or his legal personal representative, to obtain a special order in the matter for the taking and passing, from time to time, his accounts, but shall attend before the commissioner, and have an account of his receipts and payments for and on account of the lunatic and his estate, taken and passed: and that in taking and passing such accounts, the commissioner make unto the committee, or his legal personal representative, as the case may be, all just allowances, including an allowance of his and their reasonable and proper costs, charges, and expenses, and those of the next of kin of the lunatic, in passing such accounts (Order 14).

The commissioner may, from time to time, determine whether all, or how many, and which of the next of kin or of the heirs of the lunatic shall, unless at their own cost, attend before him on any proceedings in the

lunacy, and that no other of such parties shall be allowed costs out of the estate, unless by special order for that purpose. The commissioner shall be at liberty, from time to time, and at the request of any party, or otherwise, to make separate reports, and to state any circumstances as to the subject matter of the report specially, as he shall think fit (Ords. 15 & 16).

In order to avoid expence and delay in drawing orders in lunacy, no part of the statements in the petition shall be recited in any order, but only the prayer; and that no part of the commissioner's report be stated in any order, except his finding or opinion, and that before any order he passed, the original petition or petitions shall be filed with the secretary of lunatics (Ord. 17).

The following fees shall be taken in lieu of the fees heretofore received by the secretary of lunatics, viz., for every order, 2l. 10s.; for every duplicate of an order, requiring to be drawn up in Chancery, 10s.; for filing every petition, 10s. The fees to be paid every month into the Bank of England, to the credit of the accountant-general of the Court of Chancery, to the account entitled "The Suitors' Fee Fund Account;" the amount thereof to be verified by affidavit (Ords. 18 & 19).

By the 20th and last order, these orders came into operation from and after Michaelmas Term, 1842.

The commission must be executed within a month after it is obtained. The commissioner issues a warrant to the sheriff of the place where the alleged lunatic resides (if he be within the realm), directing him to summon a jury of twenty-four persons. If the witnesses will not voluntarily attend, the commissioner signs and seals a subpoena, to be served upon them. The jury, consisting of at least twelve persons, are sworn, the business is explained to them by the commissioner; the witnesses, and the alleged lunatic (who is entitled to be present if he choose) are examined, and the jury (the whole concurring) sign the inquisition, which is set forth upon paper. The inquisition is engrossed and signed by the commissioner and the jury, and is returned into Chancery within a month after it is obtained.

A commission of lunacy may be ordered against a person resident abroad, to be executed in the county where the mansion-house lies; and where a lunatic has concealed himself in this country, he may be adjudged of unsound mind, though not personally examined.

If, upon the return of an inquisition, the party is found a lunatic (which finding is not traversed, or the commission superseded, or no *caveat* has been entered against the appointment of a committee, on the ground of an improper finding), committees of his person and estate are then appointed by the Lord Chancellor, who (unless the estate is extremely small) refers it to the commissioner to approve of a proper person to act as

committee; relations are most usually appointed in preference to strangers, unless any valid objection exist. *Shelford on Lunatics, &c.*

IDONEUM SE FACERE; IDONEARE SE, to purge one's self by oath of a crime of which one is accused.

IDONEUS HOMO (a proper man). He is legally said to be *idoneus homo*, who has honesty, knowledge, and ability.

Id perfectum est quod ex omnibus suis partibus constat; et nihil perfectum est dum aliquid restat agendum. 9 Co. 9.—(That is perfect which is complete in all its parts; and nothing is perfect whilst anything remains to be done.)

Id possumus quod de jure possumus. Lane, 116.—(We may do what by law we are allowed to do.)

Id quod est magis remotum, non trahit ad se quod est magis junctum sed è contrario in omni casu. Co. Lit. 164.—(That which is more remote does not draw to itself that which is nearer, but on the contrary in every case.)

IDUMANUS FLUVIUS, Black Water in Essex.

IFUNGIA, the finest white bread, formerly called cocked bread. *Blount.*

IGNIS JUDICIUM, the old judicial trial by fire.

IGNITEGIUM [*ignis*, Lat., fire, and *tego*, to cover], the curfew. *Encyc. Lond.*

IGNORAMUS (we are ignorant). The word formerly written on a bill of indictment by a grand jury when they rejected it; the phrase now used is, "not a true bill," or "not found."

Ignorantia eorum quæ quis scire tenetur non excusat. Hale's Pl. Cr. 42.—(Ignorance of those things which every one is bound to know, excuses not.)

Ignorantia facti excusat, ignorantia juris non excusat. 1 Co. 177.—(Ignorance of the fact excuses; ignorance of the law excuses not.)

Every man must be taken to be cognizant of the law; otherwise there is no saying to what extent the excuse of ignorance may not be carried. It is, therefore, a rule—1st, that money paid with full knowledge of the facts, but through ignorance of the law, is not recoverable, if there be nothing against conscience in retaining it; and, 2ndly, that money paid in ignorance of the facts, is recoverable, provided there have been no laches in the party paying it. 2 *Smith's L. C.* 244.

In criminal cases this maxim applies, when a man intending to do a lawful act, does that which is unlawful. For there is not that conjunction between the deed and the will, which is necessary to establish a criminal act; but, in order that he may stand excused, there must be an ignorance or mistake of fact, and not an error in point of law; for a mistake in point of law, which every person of discretion, not only may, but is bound and presumed to know, is no sort of defence. 4 *Bl. Com.* 27.

Ignorantia judicis est calamitas innocentis.

2 Inst. 591.—(The ignorance of a Judge is the misfortune of the innocent.)

Ignoratis terminis ignoratur et ars. Co. Lit.

2.—(The termini being unknown, the art also is unknown.)

IKENILD STREET. See **HIKENILDE STREET.**

ILET, a little island.

ILLEGAL CONDITIONS, all those that are impossible, or contrary to law, immoral, or repugnant to the nature of the transaction. See **CONDITION.**

ILLEGAL CONSIDERATIONS. See **CONSIDERATION.**

ILLEGAL CONTRACT, an agreement to do any act forbidden by the law, or to omit to do any act enjoined by the law.

Illegal contracts have been divided into 1st, contracts which violate the common law; subdivided into,

(a) Contracts void on account of fraud, which may be either

(a) Misrepresentation.

(b) Concealment.

(β) Contracts void on account of immorality.

(γ) Contracts in violation of public policy, which may be

(a) In restraint of trade.

(b) In restraint of marriage.

(c) Marriage-brokerage contracts.

(d) Wagers.

(e) Contracts to offend against law, &c.

(f) Trading with an enemy without license.

2nd. Contracts which violate the statute provisions. *Story on Contracts*, 102.

ILLEGITIMACY. See **BASTARD.**

ILLEVIABLE, a debt or duty that cannot or ought not to be levied.

ILLOCABLE, incapable of being placed out or hired. *Bailey.*

Illud quod alias licitum non est necessitas facit licitum; et necessitas inducit privilegium quod jure privatur. 10 Co. 61.—(That which is otherwise not permitted, necessity permits; and necessity makes a privilege which supercedes law.)

Illud, quod alteri unitur, extinguitur, neque amplius per se vacare licet. Godolph Rep. Can. 169.—(That which is united to another is extinguished, nor can it be any more independent.)

ILLUSORY APPOINTMENT ACT, 1 Wm. IV., c. 46. This statute enacts that no appointment made after its passing (16th July, 1830), in exercise of a power to appoint property real or personal among several objects, shall be invalid or impeached in equity on the ground that an unsubstantial, illusory, or nominal share only was thereby appointed, or left unappointed, to devolve upon any one or more of the objects of such power; but that the appointment shall be valid in equity as at law. It provides that the act shall not prejudice any provision in any deed, will, or other instrument, declaring the amount from which no object of the power shall be excluded.

IMBARGO. See **EMBARGO.**

IMBASING OF MONEY, mixing the species with an alloy below the standard of sterling. 1 *Hale's P. C.* 102.

IMBEZZLE. See **EMBEZZLE.**

IMBRACERY. See **EMBRACERY.**

IMBROCUS, a brook, gutter, or water-passage.

IMMATERIAL ISSUE. See **ISSUE.**

IMMEDIATE EXECUTION. See **EXECUTION.**

IMMEMORIAL USAGE, custom.

IMMORAL CONTRACTS, all contracts founded upon considerations *contra bonos mores*, are void. *Ex turpi contractu non oritur actio.* But where a contract, founded upon an immoral consideration has been executed, neither law nor equity will interfere to set it aside, if both parties have been equally in fault, for *in pari delicto, potior est conditio defendentis.*

Yet, a *sealed* contract, made in consideration of past seduction and cohabitation, or past cohabitation without seduction, can be enforced; not merely because it is binding in honour and conscience, for such a reason is not legally sufficient, but because a specialty imports a consideration, which, if legal, both parties thereto are estopped from denying. 1 *Vern.* 483; 2 *Wils.* 339.

IMMOVEABLE, not to be forced from its place, the characteristic of things real, or land.

IMPALARE, to put in a pound.

IMPANEL, the writing and entering into a parchment schedule by the sheriff, the names of a jury.

IMPARGAMENTUM, the right of impounding cattle.

IMPARLANCE, [*licentia loquendi*], time to plead; also when a court gives a party leave to answer or plead at another time, without the assent of the other party. Abolished in personal actions by 2 Wm. IV., c. 39. And it is doubtful whether it is not now abolished in replevin and other actions; at all events, it is the practice to consider it so. *Chit. Arch. Prac.* 802.

IMPARSONEE, a clergyman inducted into a benefice.

IMPATRONIZATION, the act of putting into the full possession of a benefice.

IMPEACHMENT, an accusation brought against a member of Parliament, for treason, or other crimes or misdemeanors.

Impeachment by the House of Commons is a proceeding of great importance, involving the exercise of the highest judicial powers of Parliament; and though in modern times it has rarely been resorted to, in former periods of our history, it was of frequent occurrence. The last memorable cases are those of Warren Hastings, in 1788, and Lord Melville, in 1805.

The mode of proceeding is this:—A member of the House of Commons charges the accused of certain high crimes and misdemeanors, and moves that he be impeached; if the House agree to it, the member is ordered to go to the Lords, and at their bar,

in the name of the House of Commons and of all the Commons of the United Kingdom, to impeach the accused. A committee is then appointed to draw up articles of impeachment, which are reported to the House, and having been discussed and agreed upon, are engrossed and delivered to the Lords. Further articles may be delivered from time to time. The accused sends answers to each article, which are communicated to the Commons by the Lords; to these, replications are returned, if necessary. After these preliminaries, the Lords appoint a day for the trial. The Commons desire the Lords to summon the witnesses required to prove their charges, and appoint managers to conduct the proceedings. Westminster Hall has been usually fitted up as the court, which is presided over by the Lord High Steward. The Commons attend with the managers, as a committee of the whole House. The accused remains in the custody of the Usher of the Black Rod, to whom he is delivered; if a commoner, by the Serjeant at Arms attending the House of Commons. The managers should confine themselves to the charges contained in the articles of impeachment. Persons impeached of treason are entitled, by 20 Geo. II., c. 30, to make their full defence by counsel; a privilege which is also enjoyed by persons charged by the Commons with high crimes and misdemeanors. When the managers have made their charges and adduced evidence in support of them, the accused answers them, and the managers have a reply. The Lord High Steward then puts to each peer, beginning with the junior baron, the question upon the first article, whether the accused be guilty of the crimes charged therein. The peers, in succession, rise in their places when the question is put, and standing uncovered, and laying their right hands upon their breast, answer "guilty" or "not guilty," as the case may be, "upon my honor." Each article is proceeded with separately in the same manner, the Lord High Steward giving his own opinion the last. The numbers are then cast up, and being ascertained, are declared by the Lord High Steward to the Lords, and the accused is acquainted with the result. *The Imperial Parliament*, by T.E. May.

IMPEACHMENT OF WASTE. See **ABSQUE IMPETITIONE VASTI.**

IMPECHIARE, to impeach, to accuse or prosecute for felony or treason.

IMPEDIATUS. See **EXPEDITATE.**

IMPEDIENS, a defendant or deforciant.

Imperii majestas est tutelæ salus. Co. Lit. 64.—(The majesty of the empire is the health of its protection.)

Imperitiâ culpæ annumerantur. Jur. Civ.—(By ignorance failures are increased.)

Imperitia est maxima mechanicorum pœna. 11 Co. 54.—(Ignorance is the greatest punishment of mechanics.)

Impersonalitas non concludit nec ligat. Co. Lit. 352.—(Impersonality neither concludes nor binds.)

IMPERTINENCE, introducing into a pleading or an interrogatory to a witness in Chancery, long recitals, or unnecessary digressions; as where a deed is stated which is not prayed to be set forth. The pleading may be excepted to, or the interrogatory referred to a Master to ascertain such matters.

No order is to be made for referring any pleading or other matter depending before the court for scandal or impertinence, unless exceptions are taken in writing, and signed by counsel, describing the particular passages which are alleged to be scandalous or impertinent.

Where any person or party, having filed exceptions to any pleading or other matter depending before the court, for scandal or impertinence, does not obtain an order to refer the same to the Master within six days after the filing thereof, such exceptions are to be considered as abandoned, and the person or party by whom such exceptions were filed, is to pay to the opposite party such costs as may have been incurred by such party in respect of such exceptions.

Where any person or party, having obtained an order to refer such exceptions to the Master for scandal or impertinence, does not obtain the Master's report thereon within fourteen days after the date of the order, or within such further time as the Master thinks fit to allow, the exceptions and the order referring the same are to be considered as abandoned, and the person or party by whom such exceptions were filed, is to pay to the opposite party such costs as may have been incurred by such party in respect of such exceptions, order, and reference.

Upon the expiration of four days from the filing of the Master's report, that any pleading or other matter depending before the court is scandalous or impertinent, the officer having the custody or charge of such pleading or other matter, is, upon production to him of an office copy of the Master's report, and a certificate that no exception thereto was filed, or an affidavit that no order to set down any such exception was served within four days after the filing thereof, to expunge from such pleading or other matter such parts thereof as the Master has found to be scandalous or impertinent, and thereupon the person or party requiring such scandalous or impertinent matter to be expunged, is to pay to the officer expunging the same, the same fee (12.), as on the like occasion has heretofore been paid to the Master.

The Master having found any pleading or matter depending before the court, to be or not to be scandalous or impertinent, is to direct by whom the costs of and consequent upon the reference, are to be paid.

If, upon the hearing of any cause, petition, or motion, the court is of opinion that any pleading, petition, or affidavit which has not been referred for impertinence, or any

part thereof, is improper or of unnecessary length, the court may either declare such pleading, petition, or affidavit, or any part thereof, to be improper or of unnecessary length, or may direct the taxing master to look into such pleading, petition, or affidavit, and distinguish what parts or part thereof are or is improper or of unnecessary length, and may direct the taxing master to ascertain the costs occasioned to any party by such parts or part thereof, as in the one case may have been declared to be, and in the other case may have been distinguished as being improper, or of unnecessary length, and may make such order as is just for the payment, set-off, or other allowance of such costs. *Orders, 8th May, 1845, 38, 39, 40, 41, 42, and 122.*

IMPESCATUS, impeached, or accused.

IMPETITIO. See **IMPEACHMENT**.

IMPETRATION, acquiring anything by request and prayer.

IMPIERMENT, impairing or prejudicing.

IMPIGNORATION, the act of pawning or putting to pledge.

Impius et crudelis judicandus est qui libertati non favet. Co. Lit. 124.—(He is to be adjudged impious and cruel who does not favour liberty.)

IMPLEAD, to sue or prosecute.

IMPLICATION, a necessary or possible inference, of something not directly declared.

IMPLIED CONDITION. See **CONDITION**.

IMPLIED CONTRACT. See **CONTRACT**.

IMPLIED TRUSTS. It is a rule in equity, that all persons coming into possession of trust property, with notice of the trust, shall be considered as trustees by implication, and bound, with respect to that special property, to the execution of the trust. To this general rule, however, there is an exception in the case of a disseisor, abater, or intruder, who cannot be seised to a use, although he has notice, for he is not in priority of the estate to which the use was annexed, but in the *post*. 1 Rep. 122.

IMPLIED USE. See **RESULTING USE**.

IMPORTATION, the bringing goods and merchandize into this country from other nations.

IMPOST [*impôt*, Fr., *impositum*, Lat.], any tax or tribute imposed by authority; particularly a tax or duty laid by government on goods imported.

IMPOTENCY, an inability of generation or propagating the species; a ground of divorce *à vinculo matrimonii*, as being merely void, and, therefore, needs only a sentence declaratory of its being so. *Eccl. Law*.

A plea of impotence is sometimes pleaded by prisoners indicted for rape, and very nice questions as to the legitimacy of children have been contested on such a plea.

The medical jurists have classed the subject, as to the male, into absolute, curable and temporary, as to the female into curable and incurable. Consult *Beck's Med. Juris.* p. 52.

IMPOTENTIAE, *property ratione*, a qualified

property, which may subsist in animals on account of their inability, as where hawks, herons, or other birds build in a person's trees, or coney, &c., make their nests or burrows in a person's land, and have young there, such person has a qualified property in them till they can fly or run away, and then such property expires. 2 *Step. Com.* 71. *Impotentia excusat legem.* Co. Lit. 29.—(Impotency excuses law.)

IMPOUNDING CATTLE, &c., placing cattle, &c., after they have been distrained upon, in a safe place of custody. 11 Geo. II., c. 19, § 10; 5 & 6 Wm. IV., c. 59, §§ 4, 5, 6. *Woodf. Land. and Ten.* 344.

IMPREScriptable RIGHTS, such as a person may use or not, at pleasure, since they cannot be lost to him by the claims of another founded on prescription.

IMPRESSING MEN, compelling persons to serve in the navy, which is founded on immemorial usage, and has been practised for ages, being in conformity with the well known constitutional maxim, that private mischief had better be submitted to, than public detriment and inconvenience should ensue. It is provided by 5 & 6 Wm. IV., c. 24, that no person shall be detained in the royal navy, against his consent, for a longer period than five years, except in case of emergency.

1. Every ship in the coal trade has the following persons protected—viz., two able seamen (such as the master shall nominate) for every ship of 100 tons, and one for every fifty tons, for every ship of 100 tons and upwards; and any officer who presumes to impress any of the above, shall forfeit to the master or owner of such vessel, 10*l.* for every man so impressed; and such officer shall be incapable of holding any place, office, or employment in any of his Majesty's ships of war. 6 & 7 Will. III., c. 18, § 19.

2. No parish apprentice shall be compelled or permitted to enter into his Majesty's sea service till he arrives at the age of eighteen years. 2 & 3 Anne, c. 6, § 4.

3. Persons voluntarily binding themselves apprentices to sea service, shall not be impressed for three years from the date of their indentures. But no person above eighteen years of age shall have any exemption or protection from his Majesty's service, if they have been at sea before they became apprentices. 2 & 3 Anne, c. 6, § 15; 4 Anne, c. 19, § 17; and 13 Geo. II., c. 17, § 2.

4. Apprentices.—The act 5 & 6 Will. IV., c. 19, enacts some new regulations with respect to the number of apprentices that ships must have on board, according to their tonnage; and the act 4 Geo. IV., c. 25, grants protection to such apprentices till they have attained the age of twenty-one years.

5. Persons employed in the Fisheries.—The act 50 Geo. III., c. 108, grants the following exemptions from impressment, viz.: 1st. Masters of fishing vessels or boats,

who, either themselves or their owners, have, or within six months before applying for a protection shall have had, one apprentice or more under sixteen years of age, bound for five years, and employed in the business of fishing.

2dly. All such apprentices, not exceeding eight, to every master or owner of any fishing vessel of fifty tons or upwards; not exceeding seven to every vessel or boat of thirty-five tons, and under fifty; not exceeding six to every vessel of thirty tons and under thirty-five tons; and not exceeding four to every vessel or boat under twenty-nine tons burden, during the time of their apprenticeship, and till the age of twenty years; they continuing for the time in the business of fishing only.

3dly. One mariner, besides the master and apprentices, to every fishing vessel of ten tons or upwards, employed on the sea coast, during his continuance in such service.

4thly. Any landsman, above the age of eighteen, entering and employed on board such vessel for two years from his first going to sea; and to the end of the voyage then engaged in, if he so long continue in such service.

An affidavit, sworn before a justice of the peace, containing the tonnage of such fishing vessel or boat, the port or place to which she belongs, the name and description of the master, the age of every apprentice, the term for which he is bound, and the date of his indenture, and the name, age, and description of every such mariner and landsman respectively; and the time of such landsman's first going to sea is to be transmitted to the admiralty, who, upon finding the facts correctly stated, grants a separate protection to every individual. In case, however, of an actual invasion of these kingdoms or imminent danger thereof, such protected persons may be impressed; but, except upon such an emergency, any officer or officers impressing such protected persons, shall respectively forfeit 20*l.* to the party impressed, if not an apprentice, or to his master, if he be an apprentice, §§ 2, 3, & 4.

6. General Exemptions.—All persons fifty-five years of age and upwards, and under eighteen years. Every person being a foreigner, who shall serve in any merchant ship, or other trading vessel, or privateer, belonging to a subject of the Crown of Great Britain; and all persons, of what age soever, who shall use the sea; shall be protected for two years, to be computed from the time of their first using it. 13 *Geo. II.*, c. 17.

7. Harpooners, line managers, or boat steerers, engaged in the southern whale fishery, are also protected. 26 *Geo. III.*, c. 50.

8. Mariners employed in the herring fishery are exempted whilst actually employed. 48 *Geo. III.*, c. 110.

IMPREST MONEY, money paid on enlisting soldiers.

IMPRETIABILIS, invaluable.

IMPRIMERY, a print or impression.

IMPRIMIS (in the first place).

IMPRISTI, those who side with or take the part of another, either in his defence or otherwise.

IMPRISONMENT, the restraint of a person's liberty under the custody of another; and extends not only to a gaol, but to a house, stocks, or holding a man in the street, &c.; for in all these cases the party so restrained is said to be a prisoner, so long as he has not his liberty freely to go about his business, as at other times. *Co. Lit.* 253.

IMPROBATION, the act by which falsehood or perjury is proved. *Scotch Term.*

Improbi rumores dissipati sunt rebellionis prodromi. 2 *Inst.* 226.—(Wicked rumours spread abroad, are the forerunners of rebellion.)

IMPROPER FEUDS, derivative feuds; as for instance, those that were originally bartered and sold to the feudatory for a price, or were held upon base or less honorable services, or upon a rent in lieu of military service, or were themselves alienable, without mutual license, or descended indifferently to either males or females. 1 *Step. Com.* 168.

IMPROPRIATION, the act of employing the revenues of a church living to a layman's use.

IMPROVEMENT. See APPROVEMENT.

IMPRUIAMENTUM, the improvement of land.

IMPRUIARE, to improve land.

Impunitas continuum affectum tribuit delinquenti.

4 *Co.* 45.—(Impunity affords a continual bait to the delinquent.)

Impunitas semper ad deteriora invitatur. 5 *Co.* 109.—(Impunity always invites to greater crimes.)

In ædificiis lapis malè positus non est removendus. 11 *Co.* 69.—(A stone badly placed in buildings is not to be removed.)

In æquali jure melior est conditio possidentis. *Plow.* 296.—(In equal right the condition of the possessor is best.)

INALIENABLE, not transferable.

In altâ proditiōe nullus potest esse accessorius sed principalis solummodo. 3 *Inst.* 138.—(In high treason there is no accessory, but principal alone.)

In alternativis electio est debitoris.—(In alternatives there is an election of the debtor.)

In ambiguis casibus semper præsumitur pro rege.—(In doubtful cases presumption is in favour of the king.)

In Angliâ non est interregnum. *Jenk. Cent.* 205.—(In England there is no interregnum.)

In atrocioribus delictis punitur affectus licet non sequatur effectus. 2 *Rol. Rep.* 89.—(In more atrocious crimes the intent is punished, though an effect does not follow.)

IN AUTER DROIT (in another's right).

INAUGURATION, the act of inducting into office with solemnity, as the coronation of the Sovereign, or the consecration of a prelate.

IN BANCO, or BANC, sittings. The Judges

of the three superior courts of common law sit during the term, and also in vacation, if they so determine, for the dispatch of business, in their full courts, but the *puisné* Judges sit by rotation, in each term, or otherwise, as they agree among themselves, so that no greater number than three of them sit at the same time in banc, unless in the absence of the Lord Chief Justice or Chief Baron, the number of the Judges forming the full court in banc being limited to four.

The usual business brought on before the court in banc are arguments on demurrers, rules in arrest of judgment, and for new trials, &c., and in the Queen's Bench, criminal informations, parish cases, &c.

INBLAURA, profit or product of ground. *Cowell*.

INBORH, a security, pledge or hypotheca, consisting in the chattels of a party unable to obtain a personal 'borg,' or surety.

INCASTELLARE, to reduce a thing to serve instead of a castle.

In casu extremæ necessitatis omnia sunt communia. H. P. C. 54.—(In cases of extreme necessity, every thing is in common.)

INCAUSTUM, or **ENCAUSTUM**, ink. *Fleta*, l. ii. c. 27, p. 5.

Incerta pro nullis habentur. Dav. 33.—(Things uncertain are reckoned as nothing.)

Incerta quantitas vitiat actum. 1 Rol. Rep. 465.—(An uncertain quantity vitiates the act.)

INCEST, carnal knowledge of persons within the Levitical degrees of kindred. This crime is a capital offence in Scotland; here it is left to the feeble coercion of the spiritual courts.

INCHARTARE, to give or grant and assure anything by a written instrument.

INCH OF CANDLE, a mode of sale among merchants. A notice is first given upon the Exchange or other public place, as to the time of sale; the goods to be sold are divided into lots, printed papers of which and the conditions of sale are published; when the sale takes place, a small piece of candle, about an inch long, is kept burning, and the last bidder, when the candle goes out, is entitled to the lot or parcel for which he bids.

INCIDENT, a thing necessarily depending upon, appertaining to, or following another that is more worthy, as rent is incident to a reversion; a court baron is incident to a manor.

INCIDENT DILIGENCE, a process granted before *litis contestatam* in improbations, for the recovery of writs craved to be produced, and in many other cases during the dependance of a principal process. *Scotch Law*.

INCIPITUR (it is begun), the technical commencement of a declaration, demurrer-book, &c.

Incivile est nisi tota sententia inspecta de aliquâ parte judicare. Hob. 171.—(It is unlawful to judge unless the whole sentence is examined in every part.)

INCIVISM, unfriendliness to the state or government of which one is a citizen.

In claris non est locus conjecturis.—(In things obvious there is no room for conjecture.)

INCLAUSA, a home close, or enclosure near a house.

INCLOSURE ACTS, 41 Geo. III., c. 109; 1 & 2 Geo. IV., c. 23; 6 & 7 Wm. IV., c. 115; 3 & 4 Vict. c. 31; 8 & 9 Vict. 118.

Inclusio unius est exclusio alterius.—(The inclusion of one is the exclusion of another.)

INCOME TAX ACTS, 5 & 6 Vict., c. 35; 8 & 9 Vict., c. 4.

Incommodum non solvit argumentum.—(An inconvenience does not destroy an argument.)

In conjunctivis oportet utrumque partem esse veram. Wing. 13.—(In things conjunctive, each part ought to be true.)

In consimili casu, consimile debet esse remedium. Hard. 65.—(In similar cases, the remedy should be similar.)

In consuetudinibus non diuturnitas temporis sed soliditas rationis est consideranda. Co. Lit. 141.—(In customs, not the length of time but the strength of the reason should be considered.)

INCONTINENCY, vicious persons, having no command of themselves.

In contractis tacite insunt quæ sunt moris et consuetudinis.—(Those things which are of manner and custom are tacitly imported into contracts.)

In contractibus, benigna; in testamentis, benignior; in restitutionibus, benignissima interpretatio facienda est. Co. Lit. 112.—(In contracts, the interpretation is to be liberal; in wills, more liberal; in restitutions, most liberal.)

INCOPOLITUS, a proctor or vicar.

INCORPORATION, the formation of a legal or political body, with the quality of perpetual existence and succession, unless limited by the act of incorporation.

INCORPOREAL HEREDITAMENT. See **HEREDITAMENT**.

INCREMENTUM, increase or improvement, opposed to *decrementum* or abatement.

In criminalibus probationes debent esse luce clariores. 3 Inst. 210.—(In criminal cases the proofs ought to be clearer than light.)

In criminalibus sufficit generalis malitia intentionis cum facto parâ gradûs. Bacon.—(In criminal actions a general malice of intention, keeping equal pace with the fact, is sufficient.)

In criminalibus voluntas reputabitur pro facto. 3 Inst. 106.—(In criminal acts the will will be taken for the deed.)

INCROACHMENT [*accroachment*, Fr., a grasping], an unlawful gaining upon the right or possession of another.

INCUMBENT [*incumbo*, Lat., to attend diligently], a clergyman in possession of an ecclesiastical benefice.

INCUMBRANCE, a claim, lien, or liability attached to property; as a mortgage, a registered judgment, &c.

INCURRAMENTUM, the liability to a fine, penalty, or amercement.

INDEBITATUS ASSUMPSIT, that species of the action of *assumpsit*, in which the plaintiff first alleges a debt, and then a pro-

mise in consideration of the debt. The promise laid is generally implied.

INDECIMABLE, not titheable.

Inde datæ leges ne fortior omnia posset. Dav.

36.—(The laws are made lest the stronger party should possess all.)

INDEFEASIBLE, not to be made void.

INDEFENSUS, undefended.

INDEFINITE PAYMENT, where a debtor owes several debts to a creditor, and makes a payment, without specifying to which of the debts it is to be applied.

Indefinitum equipollet universali. 1 Vent. 368.

—(The indefinite equals the universal.)

Indefinitum supplet locum universalis. 4 Co.

77.—(The indefinite supplies the place of the universal.)

INDEMNITY, a writing to secure one from all danger and damage that may ensue from any act. An act of indemnity is passed in every session of Parliament for the relief of those who have neglected to take the necessary oaths of office, &c.

INDENIZATION, the act of making free.

INDENTURE, a deed indented or cut scollopwise. See **DEED**.

Index nimis sermo.—(Speech is the mind's index.)

INDICATIF, an abolished writ by which a prosecution was in some cases removed from a court christian to the Queen's Bench. *Encyc. Lond.*

INDICAVIT (he has proclaimed), a writ of prohibition that lies for a patron of a church, whose clerk is sued in the spiritual court by another clerk for tithes which amount to a fourth part of the profits of the advowson, when the suit belongs to the Common Law Courts, by West. II., c. 5, 13 Edw. I., st. 4. The patron of the defendant is allowed this writ, as he is like to be prejudiced in his church and advowson, if the plaintiff recover in the spiritual court. *Reg. Orig.* 55.

INDICTED, charging any person with an offence before a court of justice.

INDICTIO, an indictment.

INDICTION, *cycle of*, a mode of computing time by the space of fifteen years, instituted by Constantine the Great; originally the period for the payment of certain taxes. The Popes, since the time of Charlemagne, have dated their acts by the year of the indiction, which was fixed on the 1st of January. At the time of the reformation of the calendar, the year 1582 was reckoned the 10th year of the indiction. Now this date, when divided by 15, leaves a remainder of 7, that is 3 less than the indiction, and the same must be the case in all subsequent calculations; so that in order to find the indiction for any year, divide the date by 15, and add 3 to the remainder. It has no connection with the motion of the heavenly bodies. Some of the charters of King Edgar and Henry III. are dated by indictions.

INDICTMENT, [*indico*, Lat., to show], a written accusation of one or more persons, of a crime of a public nature, preferred to and presented upon oath by a grand jury. It lies against all persons (except those under incapacity, as lunatics, &c.) who actually

commit or who procure and assist in the commission of crimes, or who knowingly harbour an offender; for each, in contemplation of law, is guilty and liable to punishment according to the part which he takes in the perpetration of the offence. It consists of three parts,—the commencement, statement, and conclusion. The caption is no part of an indictment, it is merely the style of the court where it is preferred, which is prefixed by way of preamble, when the record is made up, or when it is returned to a *certiorari*. The statement must be certain as to the party indicted, and as to the person against whom the offence was committed, and also as to time and place, facts, circumstances, and intent. It must be positive, and neither double nor repugnant. There was no time limited for preferring an indictment, but by several statutes certain limitations for certain offences are fixed. If an indictment be defective, it will be quashed. 2 *Hawk. c.* 25, § 4; *Arch. Crim. Plead.* pt. 1.

Indictment, in the Scotch law, is the form of process by which a criminal is brought to trial at the instance of the Lord Advocate. Where a private party is a principal prosecutor, he brings his charge in what is termed the form of criminal letters.

Indictment de felony *est contra pacem domini regis, coronam et dignitatem suam, in genere et non in individuo; quia in Angliâ non est interregnum.* Jenk. Cent. 205.—(Indictment for felony is against the peace of our Lord the King, his Crown and dignity in general, and not against his individual person; because in England there is no interregnum.)

INDICTOR, he who indicts another for an offence.

INDICTEE, a person indicted.

INDIRECT EVIDENCE, inferential testimony as to the truth of a disputed fact, not by means of the actual knowledge which any witness had of the fact, but by collateral circumstances ascertained by competent means. 1 *Stark. Evid.* 15.

INDISTANTER, forthwith; without delay.

In disjunctivis sufficit alteram partem esse veram. Wing. 13.—(In things disjunctive, it suffices should either part be true.)

INDIVISUM, that which is held in common, without partition.

INDORSEE, the person to whom a bill of exchange is assigned by indorsement.

INDORSEMENT [*in*, Lat., upon, and *dorsum*, a back], any thing written or printed upon the back of a deed or writing.

INDORSER, he who writes his name on the back of a bill of exchange.

INDOWMENT. See **ENDOWMENT**.

In dubiis non præsumitur pro testamento. Cro. Car. 51.—(In doubtful things, it is not presumed in favour of the will.)

In dubiis magis dignum est accipiendum. (In doubtful things, that which is more worthy is to be received.)

In dubio hæc legis constructio quam verba ostendunt. Jur. Civ.—(In a doubtful point, that construction of the law which the words point out.)

In dubio pars mitior est sequenda.—(In doubt, the gentler course is to be followed.)

In dubio sequendum quod tutius est.—(In doubt, that which is the safer course is to be adopted.)

INDUCEMENT, an allegation of a motive; an incitement to a thing. A term used in pleading.

INDUCIÆ LEGALES, the days between the citation of a defendant and the day of appearance.

INDUCIARE, to prorogue, postpone, respite.

INDUCTION [*inductio* Lat., a leading into], the giving a parson possession of his church. It is performed in the following manner:—the clergyman commissioned takes the minister to be inducted by the hand, lays it upon the key of the church, the latch of the church gate, or on the church wall, and pronounces these words, "By virtue of this commission, I induct you into the real and actual possession of the rectory of, &c., with all its appurtenances." Then, opening the church door, he puts the clergyman in possession, who commonly tolls a bell, &c., showing that he has taken corporal possession of the church. Induction may also be made by delivery of a clod or a turf of the glebe.

Induction is the investiture of the temporal part of a benefice, as institution is of the spiritual. And when a clerk is presented, instituted, and inducted into a rectory, he is then, and not before, in full and complete possession, and is called, in law, *personæ impersonata*, or parson imparsonée. *Co. Lit.* 300.

INDULGENCE, in the Roman Catholic church, a remission of the punishment due to sins, granted by the Pope or church, and supposed to save the sinner from purgatory. Its abuse led to the Reformation in Germany.

INDULTO, a dispensation granted by the Pope to do or obtain something contrary to the common law.

INDUMENT, endowment.

IN ESSE (actually existing), distinguished from *in posse*, which means, that which is not, but may be. A child before birth is *in posse*; after birth, *in esse*.

Inesse potest donationi, modus, conditio sive causa; ut modus est; si, conditio; quia, causa. Dyer, 138.—(In a gift there may be a manner, condition, or cause; *ut*, introduces a manner; *si*, a condition; *quia*, a cause.)

In facto quod se habet ad bonum et malum magis de bono quam de malo lex intendit. *Co. Lit.* 78.—(In a deed which addresses itself to good and bad, the law looks more to the good than to the bad.)

INEWARDUS, a guard, a watchman.

IN EXTREMIS (in the last moments).

INFALISTALUS, a capital punishment inflicted on the sands or sea shore. *Sed. qu.*

INFAMY, public disgrace; total loss of character. This does not now incapacitate from giving evidence. 7 & 8 Vict., c. 85, § 1.

INFANGENTHEF, a privilege of lords of

certain manors, to judge any thief taken within their fee. *Anc. Inst. Engl.*

INFANT, a person under twenty-one years of age, whose acts are in many cases either void or voidable. See *AGE*.

At common law, the contracts of infants are divided into three classes:—

1st. Those which are absolutely void: such as are positively injurious to the interests of the infant, and can only operate to his prejudice; as a surety bond, a release to his guardian.

2nd. Those which are only voidable: such as are beneficial to him, which he may affirm or avoid when he comes of age; as a conveyance of lands, a promissory note, an account stated.

3rd. Those which are binding *ab initio*, and need no ratification; such are contracts for the public service, articles of apprenticeship, executed contracts of marriage, representative acts as executor or trustee, contracts for necessities. *Story on Contracts*, 21.

All conveyances by an infant are voidable by him or his heirs, on attaining majority, but an infant at the age of fifteen may make a valid feoffment of gavelkind lands, which he has by descent; yet it must be by way of sale, and not by mortgage; and an infant, at any age, may present to a church. By 1 Wm. IV., c. 47, courts of equity are empowered to direct and compel a conveyance by the infant heir or devisee, or the devisee having a limited interest of a person whose estates shall have been decreed by the court to be sold for payment of his debts. And by 2 & 3 Vict., c. 60, the court is empowered to make mortgages as well as sales of such estates, in the case where the devisee of a limited interest is an infant. As to conveyances and transfers of estates and funds vested in trustees and mortgagees, &c., being infants, see 1 Wm. IV., c. 60. Leases made by infants are also voidable on attaining majority. By 11 Geo. IV. and 1 Wm. IV., c. 65, §§ 16, 17, infants are empowered to grant renewals of leases under the direction of the Court of Chancery, and that court is authorized to direct leases of land belonging to infants, when it is to the benefit of the estate. By custom, infants seised of lands in socage, may, at the age of fifteen, make leases for years, which shall bind them after majority. All leases made to infants are voidable; but the election to avoid must be made within a reasonable time after attaining full age.

An infant cannot prosecute an action, either in person or by attorney, he must sue either by *prochein amy* or guardian; usually the former. The process is sued out in the infant's name, and the *prochein amy* approved by a Judge at chambers. An infant can appear and defend by guardian, *ad litem* only.

The general superintendence and protective jurisdiction of the Court of Chancery over the persons and property of infants,

is a delegation of the rights and duties of the Crown—the universal guardian of infants. This court interferes,

1st. In the appointment and removal of guardians. It will appoint a suitable guardian where there is none other, or none other who will or can act; but the infant must have property. Such a guardian is treated as an officer of the court, and held responsible to it. Whenever sufficient cause is shown, the court will remove a guardian, no matter how and by whom appointed. Guardians are also assisted by the court in their duty.

2nd. In the suitable maintenance of an infant, having a due regard to the rank, the future expectations, and the intended profession and employment, and the property of the infant, the court usually confines itself within the limits of the income of the property; but where the property is small, and more means are necessary for the due maintenance of the infant, the court will sometimes allow the capital to be broken in upon.

3rd. In the management and disposition of the property, by exercising a vigilant care over the conduct of guardians as to the change of property, making it in all cases advisable for them to act under the strict guidance of the court in the duties of their fiduciary office.

4th. As to the marriage. If any one marry a ward of court, without the express sanction of the court, even although with the guardian's consent, he is guilty of a contempt of court, though such person be really ignorant that he has married a ward. He will be committed to prison until he accede to such a settlement of the property as the court shall deem equitable and proper. 2 *Story's Eq.* 516; *Madd. Ch. vol. i.*, tit. "*Infants.*"

Infants institute a suit in equity by their next friend, but they must defend a suit by guardian, who is appointed by the court, and is usually their nearest relation not interested in the matter in question. *Story's Eq. Plead.* 70.

INFANTICIDE, the killing of a child after it is born. The felonious destruction of the foetus in utero, is more properly called foeticide, or criminal abortion.

In every case in which an infant is found dead, and becomes the subject of judicial investigation, the great questions which present themselves for enquiry are:—

1. What is the age of the child?
2. Was the child born alive?
3. If born alive, how long had it lived?
4. If born alive, by what means did it die?

If it be proved that its death was owing to violence, it is then to be ascertained who the murderer of it is. If suspicion fall upon the mother, it is to be determined—

1. Whether she has been delivered of a child? and,
2. Whether the signs of delivery correspond

as to time, &c., with the appearances developed in the child?

Now there are two ways in which a child may be born alive. 1. It may be born, the cord may be pulsating, shewing that it is alive, and yet it may not respire. It may thus continue for a sufficient length of time to die from natural causes, or in consequence of criminal interference, before respiration has commenced. 2. It may be born and respire.

It must be evident that when a child is born alive but has not yet respired, its condition is precisely like that of the foetus in utero. It lives merely because the foetal circulation is still going on. In this case none of the organs undergo any changes. But where a child is born alive and respire, is tested by respiration. The proofs by which this is to be established, are all deduced from certain changes which take place in the system as soon as the vital process of respiration commences. These proofs have been thus classed:—

I. Those derived from the circulating system, subdivided into—

(a) The character of the blood itself. According to Fourcroy, the points of difference between the composition of foetal and adult blood, are the following:—(1) In the foetus the colouring matter is darker, and the blood is not so susceptible of taking the brilliant red shade on exposure to the atmosphere. (2.) It contains no fibrous matter; the thickened and coagulated matter which is found in its place, more resembles gelatinous matter. (3.) It does not contain any phosphoric acid.

(β) The condition of the heart and blood-vessels. There are a number of striking and interesting peculiarities in the organs circulating the blood in the foetus, which are modified or entirely lost after the child is born, and respiration is established. 1. The *foramen ovale* becomes obliterated after birth by the closure and adhesion of its valve, leaving behind it in the adult nothing but an oval depression in the septum between the auricles, called the *fossa ovalis*. If the *foramen ovale* be found closed, in consequence of the blood taking a new route through the lungs when respiration commences, it is an evidence of the child's having been born alive. But with regard to the validity of this test, it must be obvious that, from the gradual manner in which such change takes place, a great many cases must occur, from which no positive conclusion can be drawn. 2. The *ductus arteriosus* will be found open and filled with blood in the foetus, but, after birth, it becomes gradually obliterated, the duct itself eventually changing into a ligament. Should, therefore, this duct be found permanently closed, it is a proof that the child was born alive. 3. The *ductus venosus* in the foetus, anterior to respiration, is always found open, after respiration it gradually contracts, becomes impervious, and is finally converted into a

ligament. If it be obliterated, it is a proof that the child has lived and respired; on the contrary, as it remains open a day or two at least after birth, its being found open is no proof that the child was born dead. 4. The umbilical vessels, consisting of two arteries and a vein, become gradually obliterated after birth, and converted into ligaments. From scientific observations the following conclusions have been drawn:—(a) That the foetal openings are not obliterated immediately after birth. (b) That the period at which they are obliterated are variable. (c) That most commonly the *foramen ovale* and the *ductus arteriosus* are obliterated towards the eighth or the tenth day. (d) That the order in which they are obliterated are the following—viz., the umbilical arteries, the umbilical vein, the *ductus venosus*, the *ductus arteriosus*, and, lastly, the *foramen ovale*. (e) That their obliteration proves that the child was born alive. (f) That it is impossible to infer from the fact of their not being obliterated, that the child has not respired, since the obliteration is very far from being made immediately after birth. 5. The umbilical cord after birth, and its division from the placenta, separates from the child, and drops off. In a new-born infant the cord is firm, round, and of a bluish colour. If the child live, the first change which it undergoes is that of withering, the second is that of desiccation or drying; the third is the separation of it; and, lastly, the cicatrization of the umbilicus.

The following are some general inferences which have been deduced from the examination of the circulation:—

1. If the *foramen ovale*, the *ductus arteriosus*, the *ductus venosus*, and the umbilical vessels, be obliterated, and the umbilical cord be separated, the conclusion is certain, not merely that the child has respired, but that it has lived for a considerable time.

2. If the *foramen ovale*, the *ductus arteriosus*, the *ductus venosus*, and the umbilical vessels be still open, and if the cord be still attached to the umbilicus, no inference can be drawn that the child has not respired.

3. Of all the changes in the circulating apparatus, consequent upon respiration, those of the *ductus arteriosus* are the only ones which can be rendered available in cases where the child has respired but for a short period.

4. In cases where a child has respired for a sufficient length of time, valuable presumptive evidence of the fact may be obtained from the state of the umbilical cord.

5. The changes in the circulation, consequent upon respiration, are important, in many cases, to determine the length of time during which a child may have lived after birth.

II. Those derived from the respiratory organs. There are three conditions in which the new-born child may be found: it may have respired perfectly; it may have respired imperfectly; it may not have respired at all.

In reference to these conditions the following investigations have been made.

(a) The size and configuration of the thorax. Its size, in a child which has never respired, is narrow and flattened, and the diaphragm rising into it is highly arched. This test, taken by itself, is not of much value; it is only in connection with other signs that it is of importance.

(b) The situation of the lungs. Anterior to respiration the lungs occupy a small space at the upper and posterior parts of the thorax, leaving the pericardium and diaphragm almost and sometimes entirely uncovered. If only imperfect respiration have taken place, the lungs will be found occupying the lateral portions of the thorax also. If the respiration have been complete, and especially if it have been established for a certain length of time, they will cover almost entirely the pericardium, as well as the arch of the diaphragm.

(c) The volume of the lungs, in the foetal state, is comparatively small, but as soon as respiration is established, the volume is increased, because the lungs are distended with air.

(d) Shape of the lungs. In the foetal state the edges of the lungs are sharp, and the margin of the left upper and the right middle lobes pointed. After respiration the edges of the lungs become rounded, while the pointed margins of the left upper and the right middle lobes become obtuse.

(e) The colour of the lungs in the foetus is of a brownish red, resembling very much the colour of the liver in the adult, and of the thymus gland in the foetus. After perfect respiration, it is a pale red or scarlet. Other causes, however, will modify or change the colour of the lungs, as artificial inflammation, disease, or atmospherical action.

(f) Consistence or density of the lungs. In the foetus the lungs are dense, somewhat resembling the solidity of the liver; on pressure or when cut into, they do not crepitate. After perfect respiration they become soft and spongy; air-bubbles may be squeezed out of them; and when pressed or cut into they give out a crepitus.

(g) The absolute weight of the lungs. According to Orfila no just inference can be drawn from this test.

(h) The specific gravity of the lungs. The principle upon which this test is founded, is the difference produced in the specific gravity of the lungs in consequence of the introduction of air into them. On putting the lungs of a still-born child into water, it will be found that they sink rapidly to the bottom of the fluid. On the other hand, if the lungs of a child which has breathed perfectly be put into water, they will be found to float high in that fluid. If the breathing have only been imperfect, the lungs will float or sink according as a greater or less portion of these organs has been penetrated by air. On cutting the lungs into pieces, those portions into which air has been introduced will

float, while the rest will sink. From these facts the general conclusions are, that when the lungs float, the child has respired; when they sink, that the child has not respired; when portions of the lungs only float, that the respiration has been partial and imperfect.

There are, however, several objections to this hydrostatic test: (1), that a child may not have respired, and yet the lungs may float in water from having undergone putrefaction; (2), there may be a peculiar emphysematous condition of the lungs, which may make them float in water, even though respiration has never taken place; (3), the lungs may float in consequence of artificial inflation.

The following conclusions have been drawn from an examination of the objections to the hydrostatic test:—

1. That when the lungs float in water, it must be from one of four causes,—natural respiration, putrefaction, emphysema, the artificial introduction of air.

2. As the lungs may float from other causes besides respiration, their mere floating is no proof that the child has respired.

3. As, however, it is possible to discriminate between the floating of natural respiration, and of that which is the result of other causes, it follows,

4. That, with due precautions, the floating of the lungs may be depended upon as a decided proof that the child has respired.

Another class of objections may be thus stated:—1. That although the child has breathed, yet the lungs, in consequence of disease, may have their specific gravity so increased as to make them sink in water.

2. A child may have actually breathed, but yet so imperfectly that the lungs shall not have received air sufficient to make them float. From these objections it may, therefore, be concluded,—

1. That when the lungs sink in water, it must be from one or the other of the following causes;—the total want of respiration, feeble and imperfect respiration, some diseases of the lungs rendering them specifically heavier than the water.

2. As the lungs may sink from other causes than the absence of respiration, the mere sinking is no decisive proof that the child has not respired.

3. As, however, the sinking from the want of respiration may be distinguished from that which is the result of other causes, it follows,

4. That with due precautions, the sinking of the lungs is a safe test that the child has not respired.

III. Those deduced from the abdominal organs.

(a) The liver, which is much larger in the mature fœtus, than it is after respiration has taken place.

(b) The intestines, in the fœtal state, contain a dark pitchy matter, called the meconium, which is evacuated shortly after birth, when the child is born alive.

(γ) The bladder anterior to birth contains a considerable quantity of urine, which, at variable periods after birth, is evacuated.

It is from all these various proofs of a child having respired, that the inference of its having been born alive is drawn. To all this, however, a capital objection is urged,—that a child may respire during the birth, and yet may die before it is fully born. But it has been inferred,—

1. That respiration anterior to full birth is a rare occurrence.

2. That when it does take place, it must be under circumstances which give the child the best possible chance of being born alive.

3. That when a child dies in this situation, the respiration must necessarily be imperfect, and therefore it can create no difficulty in cases where the evidences of perfect respiration are present.

4. That when a child dies in this situation, the respiration must, as a matter of course, be of short duration, and therefore it can present no difficulty in cases where, from the appearance of the umbilical cord, it is evident that respiration has been continued for some time.

Uterine respiration can never become a question in infanticide, for it takes place only under circumstances which render manual aid necessary to complete the delivery. Vaginal respiration is also so far similarly circumstanced. Respiration in the passages, as hitherto observed, takes place only—(1) in delivery by the feet, when the whole body but the head is protruded; (2) in natural delivery, either when the head is expelled or the body remains in the passages; (3) when before the expulsion of the head, and after the rupture of the membranes, the hand is introduced to accelerate tedious labor. These cases are by no means likely to occur in legal medicine.

The inquiry how long the child had lived, if born alive, is important, inasmuch as it enables us to ascertain how it compares with the signs of delivery in the reputed mother. In this inquiry no information of any importance can be obtained from the respiratory organs. The question mainly depends upon proofs deduced from the circulation, and especially from the state of the umbilical cord.

The means by which a child came to its death are either—

I. Criminal, subdivided into—

(a) The intentional neglect of tying the umbilical cord.

(b) Exposing a new-born child to the action of cold.

(γ) Keeping from the child the nourishment necessary for supporting life.

(δ) The infliction of wounds and injuries of various kinds.

(e) Asphyxiating a new-born child, or putting a stop to its respirations.

(ζ) Poisoning.

II. Accidental, as—

(a) Various causes connected with delivery, unconnected with criminal intention.

(β) Congenital malformation of certain organs.

(γ) Various diseases, which may be either congenital, or occur immediately after birth.

The questions occurring as to the mother are two:—(1) Has she been actually delivered? (2) Do the signs of delivery in the mother correspond as to time, &c., with the appearance of the child?

The usual defences are, that the woman was ignorant of her condition, or laboured under puerperal mania. *Beck's Med. Jurisp.*, chap. viii.

In favorabilibus, magis attenditur quod prodest quam quod nocet. Bacon.—(In things favoured, what does good is more regarded than what does harm.)

INEFFMENT, the act or instrument of feoffment, or investiture, synonymous with *sasine*, the instrument of possession. *Scotch Term.*

INFODATION OF TITHES, the granting of tithes to mere laymen.

INFERIOR COURTS. They are the court baron, the hundred court, and county court; and also all courts of a special jurisdiction. See COURT.

In fictione juris semper æquitas existit. 11 Co. 51.—(In the fiction of law there is always equity.)

INFIHT, or INSOCNA, violence committed on a person by one inhabiting the same dwelling.

Infinitem in jure reprobatur. 9 Co. 45.—(Infinity in law is reprehensible.)

IN FORMA PAUPERIS (in the character of a pauper). Every poor person, who may have cause of action, is entitled to have writs according to the nature of the case, without paying the fees thereon, and the Judges may assign him counsel and attorney, who, together with the officers of the court, shall act gratis. The party applying must swear that he is not worth 5*l.*, excepting his wearing apparel, and the matter involved in the cause. This discretionary indulgence is confined to plaintiffs at common law, and is not granted to defendants. A plaintiff must have a counsel's certificate of good cause of action. If the pauper recover judgment for more than 5*l.*, the counsel, attorney, and officers are entitled to such fees, as the Master will allow on taxation. A pauper is entitled to costs in all cases in which other plaintiffs are entitled to them, but in no case, *except* he omit to proceed to trial pursuant to notice or an undertaking, is he obliged to pay costs to a defendant. *R. H.*, 2 *Wm.* IV., r. 10.

In equity a pauper, under the circumstances above stated, will be admitted to sue, and also to be sued, *in formâ pauperis*.

INFORMATION, an accusation or complaint; also, communicated knowledge.

Information in *Chancery*. Where a suit is instituted on behalf of the Crown or Government, or of those who partake of its prerogative (such as idiots and lunatics), or whose rights are under its particular pro-

tection (such as the objects of a public charity), the matter of complaint is offered to the court by way of information by the attorney or solicitor-general, and not by way of petition. When a suit immediately concerns the Crown or Government alone, the proceeding is purely by way of information, but where it does not so immediately, a relator is appointed, who is answerable for costs, &c.; and if he be interested in the matter, in connection with the Crown or Government, the proceeding is then by information and bill. Informations differ from bills in little more than name and form; and the same rules are, therefore, applicable to each. *Story's Eq. Plead.* 5.

Crown information filed in the Court of Exchequer. A method of suit for recovering money or other chattels, or for obtaining satisfaction, in damages, for any personal wrong committed in the lands or other possessions of the Crown. This is instituted to redress *private* wrongs, while criminal informations are resorted to to punish *public* wrongs, or heinous misdemeanours. See EX OFFICIO INFORMATION. The most usual exchequer informations are in cases of *intrusion*, for trespasses on Crown lands; *debt*, for Crown monies due upon breaches of penal statutes; and, *in rem*, when any goods are supposed to become the property of the Crown, no one claiming them, as treasure-trove, wrecks, waifs, and estrays. 4 *Step. Com.* 48.

Information of *quo warranto*. See QUO WARRANTO.

Information, in the Scotch law, is a written pleading, ordered by the lord ordinary when he takes a cause to report to the lower house.

INFORMATUS NON SUM (I am not informed, or I have no instructions).

INFORMER, a person who prosecutes those who break any law or penal statute. See QUI TAM ACTION.

INFORTUNIUM, *homicide per*, where a man doing a lawful act, without any intention of hurt, unfortunately kills another. See HOMICIDE.

INFRA ANNUM LUCTUS (within the year of mourning).

INFUGARE, to put to flight.

INFULA, a coif, or a cassock.

INGE, meadow, or pasture.

INGENUITAS, liberty given to a servant by manumission.

INGENUITAS REGNI, the commonalty of the kingdom.

INGRESS, EGRESS, and REGRESS, free entry into, going forth of, and returning from, a place.

INGRESSU, an abolished writ of entry. It was also called *præcipe quod reddat*.

INGRESSUS, the relief which an heir at full age paid to the head lord for entering upon the fee, &c. *Blount*.

IN GROSS. See GROSS.

INGROSSATOR MAGNI ROTULI, clerk of the pipe; an exchequer officer.

INGROSSING, the fair copying of a deed or instrument for the formal execution of it by the parties thereto. See **ENGROSSING**.

INHABITANT, a dweller or householder in any place.

In hæredes non solent transire actiones quæ penales ex maleficio sunt. 2 Inst. 442.—(Penal actions arising from anything of a criminal nature, do not pass to heirs.)

INHERITANCE, a perpetual or continuing right to an estate, invested in a person and his heirs. See **CANONS OF INHERITANCE**; **ESTATE**.

INHIBITION, a writ to forbid a Judge's proceeding in a cause that lies before him. It generally issues out of a higher court to an inferior, and is similar to a prohibition.

In the Scotch law, a process to restrain sale of land in prejudice of a debt; also, a writ to prohibit credit being given to a man's wife at the creditor's peril.

In his quæ de jure communi omnibus conceduntur, consuetudo alicujus patriæ vel loci non est alleganda. 11 Co. 85.—(In those things which by common right are conceded to all, the custom of a particular district or place is not to be alleged.)

INHOC, or **INHOKE** [*in*, within, and *hoks*, a corner], any corner or part of a common field ploughed up and sowed with oats, &c., and sometimes fenced in with a dry hedge, when the rest of the field lies fallow. *Kenn. Glos.*

Iniquum est alios permittere, alios inhibere mercaturam. 3 Inst. 181.—(It is bad to permit some, and to prohibit others, to trade.)

Iniquum est aliquem rei sui esse judicem. In propriâ causâ nemo judex. 12 Co. 13.—(It is bad for any one to be judge in his own cause. No one should be a judge in his own cause.)

Iniquum est ingenuis hominibus non esse liberam rerum suarum alienationem. Co. Lit. 223.—(It is bad for free men not to have the free disposal of their own property.)

INITIALIA TESTIMONII. Before examining a witness in chief, in Scotland, he is first examined as to his disposition, whether he bear ill will to either of the parties, or has been prompted what to say, or has received any bribe. It is similar to our *voir dire*.

INITIALS, first letters of names. By 3 & 4 Wm. IV., c. 42, § 12, in all actions upon bills of exchange, promissory notes, or other written instruments, any of the parties to which are designated by the initial letter or letters, or some contraction of the Christian or first name or names, it shall be sufficient to designate such persons by the same initial letter or letters, or contraction of the Christian or first name or names, instead of stating them in full.

INITIATE, *tenant by courtesy*, the husband is so called, when a child is born, capable of inheriting the land subject to his courtesy.

In judiciis minori succurritur. Jenk. Cent. 146.—(In judicial affairs, as to the minor, he is protected.)

In judicio non creditur nisi juratis. Cro. Car. 64.—(In judgment there is not credit, save to things sworn.)

INJUNCTION, a judicial process, whereby a party is required to do a particular thing, or to refrain from doing a particular thing, according to the exigency of the writ. That which operates as a restraint upon a party in the exercise of his real or supposed right, is sometimes called the remedial writ of injunction. That which commands an act to be done is sometimes called the judicial writ, because it issues after a decree, and is in the nature of an execution to enforce the same.

The prevention of mischief, which should be one of the principal objects of every system of jurisprudence, constitutes a very important branch of equitable jurisdiction, without which the benefit of an equity against proceedings at law, could not be had. The general rule is that courts of equity will not interfere to prevent the commission of any crime, excepting to restrain a libel upon an infant, who is under the peculiar protection of the court, and excepting such cases of public nuisances as are more particularly injurious to particular persons in the neighbourhood, and also constituting private injuries.

An injunction, if the circumstances are such as to warrant it, may be obtained in the following cases:—1. To stay proceedings in other courts, which is a *common injunction*.

The Court of Chancery will, on a bill filed, grant an injunction to the Spiritual Court to stay the husband's proceedings in that court, to obtain a legacy given to his wife, because that court cannot compel him to make an adequate settlement upon his wife.

In all cases of legacies, where there is a trust, or anything in the nature of a trust, an injunction will be granted, trusts being proper only for the cognizance of a court of equity. Injunctions are not granted where the Ecclesiastical Court proceeds without jurisdiction; the proper course being, in such a case, to apply to a court of common law for a prohibition, a court of equity interfering only where there are some equitable circumstances between the parties.

Proceedings in the Spiritual or Admiralty Courts cannot be stayed by the common, but only by a special injunction.

An injunction may, on proper grounds, be obtained to stay proceedings in a court of law, equity admitting the jurisdiction of the common law courts, the ground upon which it issues its injunction being, that the parties are making use of that jurisdiction contrary to equity and conscience.

It is not necessary to state in detail all the various occasions in which a court of equity interferes by injunction to restrain proceedings at law. It is a general rule, illustrated by an abundance of cases, that wherever a party, by fraud, accident, or otherwise, has an advantage by proceeding in a court of

ordinary jurisdiction, which must necessarily make that court an instrument of injustice, a court of equity, to prevent a manifest wrong, will interpose, by restraining the party whose conscience is thus bound, from using the advantage he has improperly gained. The following cases require a *special* injunction :

2. To restrain the infringement of a patent. If one obtain a patent, and have been long in the exclusive enjoyment of it, an injunction will be issued against a person invading it, until the right is tried at law, and this although the equity Judge may be doubtful whether the patent is good ; but if the patent be clearly bad, an injunction will not be granted, superseding the common law remedy.

3. To stay waste. Injunctions lie to prevent a purchaser, who has not paid all the purchase money, from cutting timber, or executing other acts of ownership.

In equitable as well as in legal waste, if a *threat* to commit waste, or one even small act of waste be established, the court will immediately, even in vacation, restrain equitable, as well as legal waste generally, and even upon threat without any act done, or where a party insist on his right. And although there would be a remedy at law, yet where the waste would be very injurious to the estate, an injunction may be obtained, as to prevent digging contrary to a lessee's covenant. So ploughing pasture lands long unploughed, may be restrained, and the cutting ornamental timber, even on behalf of a mere tenant. So of underwood, if it be of insufficient growth, removing valuable stones on the sea-shore, digging coals in a mine by a trespasser, or against a tenant or under-tenant from year to year, after notice to quit, from committing damage or removing crops, manure, &c., contrary to the custom of the county. Equity will not interfere to prevent *permissive* waste, contrary to a covenant to repair, or contrary to a covenant not to lop trees or carry off dung, or not to plough pastures (*not ancient* meadows), if stipulated damages (as 5*l.* per acre) are to be paid for the breach, such damages being recoverable at law ; but a mere clause of forfeiture would be otherwise.

An injunction is never granted against a person having the inheritance, unless he is only a trustee, or in such like special case.

4. The sale of books, printed music, prints, &c.

The prevention by injunction of piracies, or imitations of a copyright in books or music, busts, and sculptures, engravings, and prints, patterns for printed linens, cottons, and muslins, and of patents of various descriptions, is one of the most common branches of jurisdiction of a court of equity. The various statutes for the protection of those several inventions usually give a penalty and an action at law for certain actually completed and specified injuries to those rights. Besides the specified injuries and remedies in the statutes, it should seem,

however, that, provided the statute right can be established, then the common law would also provide a remedy for any other injury, though not specified in the acts. And although the statutes are silent as to the interference of courts of equity, yet they interfere *summarily* in protection of the legal right, for otherwise an injury might be committed with impunity, or the party have to seek redress against a mere pauper.

If, however, the publication be of such a nature that the author can maintain no action at law, a court of equity will not grant an injunction, even upon a submission in the answer : " The court," for instance, " will not," says Lord Eldon, " give an account of the unhallowed profits of libellous publications." *Lawrence v. Smith*, 1 Jac. 471.

A court of equity will even restrain the theatrical representation of a tragedy or play, the copyright of which is vested in the complainant, although at that time the statutes only provided for a particular injury, viz., the publishing or selling a similar book ; but the stat. 3 *Wm. IV.*, c. 15, now protects dramatic literary property from such injuries. So the printing of oral lectures, as those of Mr. Abernethy, was restrained, although he had not published any book, so as to be entitled to sue for a piracy under the statutes. See COPYRIGHT.

Where the right of printing and selling a work is grounded upon an act of Parliament, it is not necessary to establish the right at law previously to filing a bill, and where there has been a length of exclusive enjoyment under a patent, the court will grant an injunction in the first instance, without previously putting the party to establish his right by an action at law ; but otherwise, if the patent be recent, or the piracy or imitation be doubtful, or if the claim to the copyright depend upon the effect of an agreement, no injunction will be granted until recovery in an action.

The assignment of a copyright in a book or song, &c., should, by express enactment, be in writing, and attested by two witnesses, so as to pass the interest, and enable the assignees to maintain an action for pirating it. 8 *Geo. II.*, c. 13.

Injunction bills very seldom come to a hearing, the injunction being usually acquiesced in, and an account, in general, not required.

5. To prevent the negotiation of bills, notes, &c., and the transfer of stock :—

A court of equity will grant an injunction to prevent the negotiating or parting with a bill of exchange, or promissory note, obtained upon an illegal transaction (as at play), upon affidavit of the facts, and this immediately after filing the bill, and even before service of the subpoena to appear ; and the circumstance of there being an available defence at law, constitutes no answer to an application for an injunction to prevent the negotiation of the instrument, because by a

change of holder, the situation of the applicant might be unjustly prejudiced in the means of defence. A transfer of stock will be restrained, and also the proceeds of fraud invested in stock. See the Stock Jobbing Act, 7 Geo. II., c. 8.

6. To prevent the commission of nuisances. Injunctions to stay nuisances will, under circumstances, be granted, but they will be extended only to such as are nuisances at law; the fears of mankind, though they may be reasonable ones, will not create a nuisance.

Nuisances are private or public; a private nuisance is that which affects only particular persons, as in stopping up ancient lights, &c.; a public nuisance is such as affects many persons, though, at the same time, it may likewise be of a private nature, also, as in the case of a hole in the Queen's highway, &c. To remove public nuisances, an information may be exhibited in the name of the attorney-general, and it is for his consideration whether it shall be filed or not, and the attorney-general requires a case to be laid before him previously to giving his consent to the information being filed in his name.

It seems necessary, both in public and private nuisances, that a judgment at law, ascertaining the rights of the parties, should be obtained previously to an injunction. A nuisance respecting lights is not such merely because the plaintiff's lights are altered, for then no vacant piece of ground could be built upon in London, but the law says it must be so near as to create a nuisance; seventeen feet distance will not constitute a nuisance. The loss of a prospect is not considered a nuisance.

7. Miscellaneous cases, in which an injunction has been granted:—

If an ejectment be brought to try a right to land at common law, equity will restrain the party in possession from setting up any title which may prevent the fair trial of that right, as a term for years, or other interest in a trustee, lessee, or mortgagee. But if the possessor be a purchaser for a valuable consideration, without notice of the claimant's title, his title is in conscience equal to that of the claimant, and the court will not restrain him from using any advantage he may be able to gain to defend his possession. So, a party having a lien, and obtaining possession.

It seems that the court cannot decree or order repairs to be done, though (a nice distinction) an order may be made in terms that will have that effect. Thus, an order to repair the banks of a canal, and stop gates and other works, was refused; but the effect of such an order was obtained by an order to restrain the defendant from further impeding the plaintiff in the navigation, "by continuing to keep the said canals, or the banks, gates, locks, or works of the same respectively out of good repair." *Law v. Newdigate*, 10 Ves. 194.

An injunction will be granted to prevent a presentation and institution to a living, and to inhibit the defendants from dissolving a commercial partnership, or to restrain a partner from accepting or negotiating bills of exchange, &c., for or in the name of the partnership, except the same be given or negotiated by such partner for the purposes of the partnership; and an attorney or solicitor will be restrained by the court from giving up his client, and acting for the opposite party in any suits between them; but if his client discharge him, he may then, it seems, if he can overcome the feeling of its impropriety, employ himself in the service of the other party.

An injunction may be obtained, in many cases, to prevent an executor from getting the assets of the testator into his hands, or to restrain a breach of covenant; as where a tenant is carrying off a farm, manure, &c., he had covenanted to consume upon it; but where a covenant is of such a description that a breach of it can only be ascertained by a trial at law, the court will not interfere.

Perpetual injunctions are granted on many occasions, as against a bond for the purchase of an office, although the office were not within 5 & 6 Edw. VI., and against a bond of resignation (the patron making an ill use of it) to prevent the incumbent demanding tithes. 1 *Madd. Chan.* 174; *Eden on Injunctions*.

The practice to obtain a writ of injunction may be thus epitomized:—

A bill must first be filed, in which the writ is prayed for. As to a *special* injunction, it may be applied for by motion at any stage of a suit, and either in term or vacation, and whether the court is or is not sitting (but if it be not sitting, a petition setting forth the substance of the bill, must be presented to an Equity Judge at his private residence), supported by an affidavit and accompanied by a certificate of the bill having been filed, and this may be done *ex parte*, without giving the defendant notice, or serving him with a copy of a subpoena to appear and answer, where the grievance sought to be restrained is very pressing, in cases of less urgency, notice of the motion must be served upon the defendant. Immediately the court has made an order, the plaintiff may, if it be urgent, serve the parties enjoined with a notice in writing, stating that an injunction has been granted, and that it will be sealed and served as soon as it can be issued; or a copy of the minutes of the order, signed by the registrar, may be served personally, which will answer the same purpose of stopping the defendant's proceedings, provided the plaintiff lose no time in serving the injunction. The issuing of the injunction is now regulated by Order 26 Oct. 1842, 4, 16, 17. A defendant may move, giving notice thereof to the plaintiff, to dissolve either upon affidavits or on the merits of his answer duly filed.

As to the *common* injunction, a bill must

he filed, and a subpoena served in the usual way; but the subpoena may be issued and served before the bill is filed, provided that the bill is filed before the return of the subpoena, otherwise the defendant may move or prefer for costs. By the 59th of the Orders, 8th May, 1845, the plaintiff in a bill praying an injunction to stay the proceedings at law, is entitled, as of course, on motion or petition and without an attachment, to the common injunction for want of appearance, if a defendant has not appeared in person or by his own solicitor, on or after the expiration of eight days from the service of the subpoena, and for want of answer, if a defendant is in default for want of answer on or after the expiration of eight days from the day on which an appearance was entered by or for him. The 60th of the same Orders provides, that a plaintiff in an injunction cause, having obtained the common injunction to stay proceedings at law, may (either before or after the answer of a defendant is put in, and whether such injunction be or be not continued to the hearing of the cause) obtain one order, as of course, to amend his bill without prejudice to the injunction; and if such bill be amended pursuant to such Order, such defendant may thereupon, and although he may not have put in his answer to such bill or the amendments thereof, move the court on notice to dissolve the injunction on the ground that such bill as amended does not, even if the amendments be true, entitle the plaintiff thereto. If a defendant file his answer within eight days after appearance, and is not in contempt for want of answer, the plaintiff must move for the injunction upon the merits disclosed by the answer. The writ is issued in the same manner as a special writ of injunction. If the injunction be obtained before proceedings have been commenced at law, it restrains every thing; if after an action has been brought and declaration delivered it only restrains execution, if then it is wished to stay trial, a separate motion must be made, as an injunction to stay execution and trial cannot be granted on one motion. As soon as the defendant has filed his answer, he may obtain, either upon petition or motion, as of course, an order *nisi* to dissolve, which must be served two clear days, at least, before the day on which cause is to be shown. If a breach of an injunction be made, a motion *nisi* may be obtained, or notice of motion given that the person making the breach may stand committed.

In jure non remota causa, sed proxima spectatur. Bacon.—(In law, the proximate, and not the remote cause, is to be looked to.)

Injuria fit ei cui convicium dictum est, vel de eo factum curmen famosum. 9 Cro. 60.—(An injury is done to him to whom a reproachful thing is said, or concerning whom an infamous song is made.)

Injuria illata judici, seu locum tenenti regis, videtur ipsi regi illata, maxime si fiat in exercentem officii. 3 Inst. 1.—(An injury

offered to a Judge, or person representing the King, is considered as offered to the King himself, especially if it be done in the exercise of his office.)

Injuria non præsumitur. Co. Lit. 232.—(Injury is not to be presumed.)

Injuria propria non cadet in beneficium facientis. —(A particular wrong shall not fall to the benefit of the person doing it.)

INJURY, any wrong or damage done to another, either in his person, rights, reputation, or property.

INLAGARE, to admit or restore to the benefit of the law; to in-law, or render law-worthy.

INLAGARY, or **INLAGATION**, a restitution of an outlaw to the protection and benefit of the law.

INLAGH, a person with the laws' protection, contrary to *utlagh* an outlaw.

INLAND, demesne land; that which was let to tenants, being denominated *outland* (*utland*).

INLAND BILL OF EXCHANGE, a bill which is payable in the country where it is drawn. Its use in England was not resorted to until the reign of Charles II.

INLAND TRADE, trade wholly managed at home, contrary to commerce: which see.

INLANTAL, **INLANTALE**, demesne or inland, opposed to *delantal*, or land tenanted.

INLEASED, insnared.

INLEGIARE, admitted into the protection of law, after undergoing and satisfying a legal punishment for a delinquency.

IN LIMINE (in the outset).

IN LOCO PARENTIS (in the place of a parent).

In majore summa continetur minor. 5 Co. 115. —(The minor is contained in the highest major.)

In maximâ potentia minima licentia. Hob. 159. —(In the greatest power is the smallest licentiousness.)

INNAMIUM, a pledge.

INNINGS, lands recovered from the sea; when rendered profitable they are termed *gainage* lands.

INNOCENT CONVEYANCES, a covenant to stand seised, a bargain and sale, and release, so called, because since they convey the actual possession by construction of law only, they do not confer a larger estate in property than the person conveying possesses, and therefore, if a greater interest be conveyed by these deeds, than a person has, they are only void *pro tanto*, for the excess. But a feoffment was a *tortious* conveyance, and therefore, under such circumstances, would be void altogether, and produce a forfeiture. But by the 4th § of the 8 & 9 Vict., c. 106, a feoffment made after the 1st October, 1845, shall not have any tortious operation.

INNONIA, an inclosure.

INNOVATION, an exchange of one obligation for another, so as to make the second come in place of the first. *Scotch Term*.

INNOXIARE, to purge one of a fault and make him innocent.

INNKEEPERS, proprietors of common inns, for the accommodation of travellers in general.

By the common law, innkeepers are bound to take not merely ordinary care, but uncommon care of the goods, money, and baggage of their guests; and they are responsible for the acts of their servants and domestics, as well as for the acts of other guests.

All persons are deemed innkeepers who keep houses where a traveller is furnished with every thing which he has occasion for whilst on his way. They are bound to take in all travellers and wayfaring persons, and to entertain them, if they can accommodate them, for a reasonable compensation, provided they behave themselves properly, &c.; and they have a lien upon the goods of their guests for board and lodging, &c.; but the lien does not extend to their persons, or personal clothing in actual wear. Guests are those who are *bond fide* travelling, and not mere neighbours and friends who visit the house occasionally. Innkeepers are only liable for the goods brought within their inn, but the goods need not be delivered to the innkeeper, nor is it necessary to give him actual notice of the goods being lodged in his inn. An innkeeper cannot exonerate himself from liability, save by positive proof that there was no default or negligence in him or his servants; but if a guest take upon himself exclusively the custody of his own goods, or has, by his own neglect, exposed them to peril, he exonerates thereby the liability of the innkeeper. *Story's Bail.* 470.

INNOTESCIMUS [*innotesco*, Lat., to make known], a kind of letters-patent.

In novo casu, novum remedium apponendum est.
2 Inst. 3.—(A new remedy is to be applied to a new case.)

INNS OF CHANCERY, so called, perhaps, because anciently inhabited by such clerks as chiefly studied the framing of writs, which regularly belonged to the cursitors, who are officers of the Court of Chancery. There are nine of them, which are appendages to the inns of court, viz., Clement's, Clifford's, and Lyon's Inns belong to the Inner Temple; Furnival's, Thavies', and Symond's Inn to Lincoln's Inn; New Inn to the Middle Temple; and Barnard's and Staple's Inns to Gray's Inn. These were formerly preparatory colleges for younger students, and many were entered in them before they were admitted into the inns of court.

INNS OF COURT. There are four of them, exercising the right of admitting persons to practise at the bar—the Inner Temple, the Middle Temple, Lincoln's Inn, and Gray's Inn. No means of obtaining that rank exists, but that of becoming enrolled as a student in one or other of these inns, and afterwards applying to its benchers for a call to the bar.

The following rules appear to have been adopted by all the four societies:—Before any person can be admitted a member, he

must furnish a statement in writing describing his age, residence, and condition in life, and comprising a certificate of his respectability, and fitness to be admitted, which must be signed by the party and a bencher of the society, or two barristers. The Middle Temple requires the signatures of two barristers of that inn, and of a bencher: but in each of the three other inns, the signatures of barristers of any of the four inns will suffice. No person is admitted without the approbation of a bencher, or of the benchers in council assembled. No person in any trade or business, nor in the Middle Temple in any other profession than the law; nor attorney, solicitor, writer to the signet, or solicitor of the Scotch courts, notary public, or parliamentary agent, or acting as such; nor any clerk of any such, or of any barrister, conveyancer, special pleader, clerk in Chancery, or other officer in any court of law or equity, whether such clerk be articulated or receive a salary, or any other remuneration for his services, shall be allowed to keep commons for the purpose of being called to the bar until such attorney or solicitor shall have taken his name off the rolls, and such other person above described, ceased to act or practise in those capacities.

At Lincoln's Inn no person can be admitted a student, or called to the bar, who has ever been a paid clerk to a barrister, conveyancer, special pleader, or equity draftsman. As soon as a person has been admitted a student, he is allowed free access to the valuable library of the inn to which he belongs, and is also entitled to a seat in the church or chapel of the inn, paying only some trifling sum annually, under the name of "preacher's dues." He is also entitled to have his name set down for chambers; in which case he receives notice of all such as become vacant, and will be permitted to rent them of the society, subject to the right of members of the bar to do so, or of those who may have made prior application.

The applicant must, before he can enter into commons (and, in some of the societies, on admission), sign a bond, with sureties conditioned to pay the dues.

Every person applying to be admitted a member of any of the inns, must sign a declaration that he is desirous of being admitted for the purpose of being called to the bar; and it is required by all the societies that he shall not, without the special permission of the society, take out any certificate as a special pleader, conveyancer, draftsman in equity, &c., under 44 Geo. III., c. 98; and such permission is not granted until the applicant shall have kept twelve terms; and it is given for one year only at a time, the penalty of practising without it being expulsion. The stamp on every such certificate is twelve pounds, if the party reside in the city of London or Westminster, or within the limits of the district post; if elsewhere, eight pounds.

A student, previous to his keeping any of his terms, must deposit with the treasurer of the society 100*l.*, to be returned, without interest, on its depositor being called to the bar; or, in case of his death, to his personal representatives; but this deposit is not required on the part of persons who shall produce a certificate of having kept two years' terms in any of the universities of Oxford, Cambridge, and Dublin, or (in the Middle Temple) of Durham and London, an exemption which may soon be adopted by the other inns; or of his being a member of the Faculty of Advocates in Scotland. It has also been a rule at the Inner Temple, since the year 1829, that no person shall be admitted a student without a previous examination (by a barrister appointed by the bench for that purpose) in classical attainments, and the general subjects of a liberal education. Such examination is to include the Greek and Latin languages, or one of them, and such subjects of history and general literature as the examiners may think suited to the age of the applicant. It has, however, been very recently (1845) determined by the benchers, that this rule shall not extend to persons who have taken the degree of B.A., or passed their examinations at the universities of Oxford, Cambridge, or Dublin.

No person can be called to the bar at any of the inns before he is twenty-one years of age; and in all the inns, except the Middle Temple and Gray's Inn, it would seem that a standing of five years is required before being called to the bar, unless the applicant shall have taken the degree of Master of Arts or Bachelor of Laws, at the universities of Oxford, Cambridge, or Dublin, or at Lincoln's Inn, be a member of the Faculty of Advocates in Scotland: in any of which cases the party may be called to the bar after having been a member of the inn of court for only three years; but this exception does not extend to honorary degrees.

INNUENDO [*innuo*, Lat., to nod], a word used in declarations, indictments, and other pleadings, to ascertain a person or thing which was named before; as to say, he (*innuendo*, i. e., meaning the plaintiff) did so and so, when there was mention before of another person. 3 *Step. Com.* 477.

In odium spoliatoris omnia præsumuntur. 1 Vern. 19.—(All things are presumed in odium of a despoiler.)

INOFFICIOUS TESTAMENT, a will contrary to a parent's natural duty.

In omni re nascitur res quæ ipsam rem exterminat. 2 Inst. 15.—(In every thing the thing is born which destroys that thing itself.)

INOPS CONSILII (wanting advice).

INORDINATUS, an intestate.

In pari delicto, potior est conditio possidentis. —(In equal fault, the condition of the possessor is the more favourable.)

INPENY AND OUTPENY, customary payments on alienation of tenants, &c.

IN POSSE (in a state of possibility).

præparatoriis ad iudicium favetur actori. 2

Inst. 57.—(In things preceding judgment the plaintiff is favoured.)

In præsentia majoris cessat potentia minoris.

Jenk. Cent. 214.—(In the presence of the major, the power of the minor ceases.)

IN PRÆSENTI (at the present time).

IMPRISII, adherents or accomplices.

IN PROPRIA PERSONA (in one's own proper person).

INQUEST, judicial enquiry.

INQUEST, *coroner's*. See **CORONER**.

INQUEST OF OFFICE, an enquiry made by the king (or queen's) officer, his sheriff, coroner, or escheator, *virtute officii*, or by writ sent to them for that purpose, or by commissioners specially appointed, concerning any matter that entitles the king to the possession of lands or tenements, goods or chattels. In order to avoid the possession of the Crown acquired by the finding of such office, the subject may have his petition of right, *monstrans de droit*, or traverse, as the case may be. 4 *Step. Com.* 40.

INQUIRENDO, an authority given to some official person to institute an enquiry concerning the Crown's interests.

INQUIRY, *Court of*, sometimes appointed by the Crown to ascertain the propriety of resorting to ulterior proceedings against a party charged before a court martial. 1 *Bl. Com.* 418, note by Mr. Justice Coleridge.

INQUIRY, *writ of*, a judicial process addressed to the sheriff of the county in which the venue in the action is laid, stating the former proceedings in the action, and "because it is unknown what damages the plaintiff has sustained," commanding the sheriff that, by the oath of twelve honest and lawful men of his county, he diligently inquire the same, and return the inquisition into court. This writ is necessary after an interlocutory judgment, the defendant having let the proceedings go by default, to ascertain the *quantum* of damages. As the inquest, however, merely informs the court, the court may, in all cases, if it please, assess the damages, and thereupon give final judgment; and it is the practice in actions upon bills of exchange, promissory notes, or bankers' cheques, to refer it to one of the Masters to compute the amount of principal and interest without a writ of enquiry. If the computation of damages be not a mere matter of calculation, the court will not refer it to one of the Masters, but the plaintiff must sue out his writ of inquiry. *Chit. Arch. Prac.* 707.

INQUISITION, inquiry, inquest.

INQUISITOR, any officer, as a sheriff, coroner, &c., having power to inquire into certain matters.

In quo quis delinquit, in eo de jure est puniendus. Co. Lit. 233.—(In that which any one offends, in that, according to law, is he to be punished.)

IN RE (in the matter of).

In rebus manifestis errat qui auctoritates legum allegat; quia perspicua vera non sunt probanda. 5 Co. 67.—(In things manifest, he errs who alleges the authorities of laws, because obvious truths need not be proved.)

In rebus quæ sunt favorabilia animæ, quamvis sunt damnosa rebus, fiat aliquando extensio statuti. 10 Co. 101.—(In things that are favourable to the spirit, though injurious to the things, an extension of the statute should sometimes be made.)

In re dubiâ magis inficiatio quam affirmatio intelligenda. Godb. 37.—(In a doubtful case, the negative is better understood than the affirmative.)

IN REM (against the thing or property).

In republicâ maximè conservandu sunt jura belli. 2 Inst. 58.—(The laws of war are greatly to be preserved in the state.)

In restitutionem, non in pœnam hæres succedit. 2 Inst. 198.—(The heir succeeds to the restitution, not to the penalty.)

In restitutionibus benignissima interpretatio facienda est. Co. Lit. 112.—(The most benignant interpretation is to be made in restitutions.)

INROLMENT [*irrotulatio*]. See **ENROLMENT**.

In satisfactionibus non permittitur amplius fieri quam semel factum est. 9 Co. 53.—(In damages, more must not be received than is received at one time.)

INSCRIPTIONES, written instruments by which anything was granted.

INSERVIRE, to reduce persons to servitude.

INSEPERNA, an inditch.

INSIDIATOIRES VIARUM, way-layers.

INSIGNIA, ensigns or arms.

INSILIARIUS, an evil counsellor.

INSILIUM, evil advice or counsel.

INSIMUL COMPUTASSET (he accounted together), a writ or action of account which lay for things uncertain.

INSIMUL TENUIT, a species of the abolished writ of formedon, brought against a stranger by a co-partner on the ancestor's possession.

INSOLVENCY, the state of a person who has not property sufficient for the payment of his debts. The acts for the relief of insolvent debtors in the Insolvent Court, are 1 & 2 Vict., c. 110, and 2 & 3 Vict., c. 39; in the Court of Bankruptcy, 7 & 8 Vict., cc. 70, 96.

INSPECTATOR, a prosecutor or adversary.

INSPECTION, examination.

Trial by inspection was resorted to, when, for the greater expedition of a cause in some point or issue, being either the principal question, or arising collaterally out of it; but being evidently the object of sense, the Judges of the court, upon testimony of their own senses, shall decide the point in dispute. *Obsolete.*

Inspection of written documents. Where a plaintiff declares upon a written instrument not under seal, or where an action is founded upon such an instrument, the defendant may, in general, have a copy of it, by applying to a Judge at chambers, who will order a copy of it to be forthwith delivered to the defendant, and all proceedings, in the meantime, stayed. It is analagous to oyer of deeds, &c.

Also where a defendant is possessed of

any written instrument, of which it is material that a plaintiff should have inspection, a Judge at chambers, under particular circumstances, will order that such plaintiff may have leave to inspect it; that the defendant shall furnish a copy of it at the plaintiff's expense, and that the defendant shall produce it at the trial, if called upon to do so, or that he shall produce it to the plaintiff's attorney, in order that he may ascertain the names of the witnesses, so as to subpoena them.

In general, no order can be obtained for the inspection of instruments or books of a private nature, in the hands of a third person; but either of the parties to an action has a right to inspect and take copies of books of a public nature in which he has an interest, and which are material. *Chit. Arch. Prac.* 1023.

INSPEXIMUS (we have inspected).

INSTALLATION, the ceremony of inducting or investing with any charge, office, or rank, as the placing a bishop into his see, a dean or prebendary into his stall or seat, or a knight into his order.

INSTALMENT, the payment of a certain portion of a gross sum, which is to be paid at different times. It is a frequent condition in bonds, warrants of attorney, &c. Also giving possession of an ecclesiastical dignity, and is correlative to a rector or vicar's induction to a benefice.

INSTANCE, that which may be insisted on at one diet or course of probation. *Scotch Term.*

INSTANCE COURT OF ADMIRALTY. See **ADMIRALTY**.

Instans est finis unius temporis et principium alterius. Co. Lit. 185.—(An instant is the period of one time, and the beginning of another.)

INSTANTER, immediate; at once.

Trial *instanter*, is had where a prisoner between attainder and execution, pleads that he is not the same who was attainted. 4 *Step. Com.* 461.

When a party is ordered to plead *instanter*, he must plead the same day.

IN STATU QUO (in the condition in which it was).

INSTAURUM, a stock of cattle.

INSTIRPARE, to plant or establish.

IN STIRPES (according to lineage).

INSTITOR, a consignee or factor.

INSTITUTE, a commentary, a treatise. Also, in Scotland, a person to whom an estate is first given by destination or limitation.

INSTITUTION, used in three senses:—1, laws, rights, and ceremonies enjoined by authority, as permanent of conduct or of government; 2, putting a clerk into possession of a spiritual benefice, previous to which the oaths against simony and of allegiance and supremacy are to be taken; 3, a society for promoting any public object, as a charitable or benevolent institution.

INSTITUTIONES. It was the object of Justinian to comprise in his Code and Di-

gest, or Pandect, a complete body of law. But these works were not adapted to the purposes of elementary instruction, and the writings of the ancient jurists were no longer allowed to have any authority, except so far as they had been incorporated in the Digest. It was, therefore, necessary to prepare an elementary treatise, for which purpose Justinian appointed a commission consisting of Tribonianus, Theophilus, and Dorotheus. The commission was instructed to compose an institutional work, which should contain the elements of the law (*legum cunabula*), and should not be encumbered with useless matter (*Prooem Inst*). Accordingly they produced a treatise under the title of Institutiones, or Elementa (*de juris docendi ratione*), which was based on former elementary works of the same name and of a similar character, but chiefly on the Commentarii of Caius or Gaius, his Res Quotidianæ, and various other Commentarii. The Institutiones were published with the imperial sanction at the close of the year, A.D. 529, at the same time as the Digest.

The Institutiones consist of four books, which are divided into titles. The first book treats chiefly of matters relating to personal status; the second treats chiefly of property and its incidents, and of testaments, legacies, and fidei-commissa: the third treats chiefly of successions to the property of intestates, and matter incident thereto, and on obligations not founded on delict; the fourth treats chiefly of obligations founded on delict, actions, and their incidents, interdicts, and of the Judicia Publica. There were various institutional works written by the Roman jurists. There still remain fragments of the Institutiones of Ulpian, which appear to have consisted of two books. The four books of the Institutiones of Gaius were formerly only known from a few excerpts in the Digest, from the Epitome contained in the Breviarium, from the Collatio, and a few quotations in the Commentary of Boethius on the Topica of Cicero, and in Priscian. There has been a great difference of opinion as to the age of Gaius, but it appears from the Institutiones that he wrote that work under Antoninus Pius, and M. Aurelius Gaius belonged to the school of the Sabiniani. The jurists whom he cites in the Institutiones are Cassius, Fufidius, Javolenus, Julianus, Labeo, Maximus, A. Mucius, Ofilius, Proculus, Sabinus, Servius, Servius Sulpicius Sextus, Tubero. *Smith's Dict. of Antiq.*

INSTRUMENT, a deed, writ, or other law proceeding, reduced into writing.

IN SUBSIDIUM (in aid).

INSUCKEN MULTURES, a quantity of corn paid by those who are thirled to a mill. See **THIRLAGE**.

INSUFFICIENCY, an answer in Chancery is said to be insufficient when it does not specifically reply to the specific charges in the bill.

If a plaintiff conceive an answer to be insufficient, he may take exceptions to it in

writing, stating the parts of the bill which the plaintiff alleges are not answered, and praying that the defendant may, in such respect, file a further and full answer to the bill. Scandal and impertinence in an answer must be disposed of before its sufficiency can be considered.

After the filing of a defendant's answer the plaintiff has six weeks within which he may file exceptions thereto for insufficiency, otherwise the answer will be deemed sufficient.

A defendant desiring to avoid a reference to the Master, of exceptions to his answer for insufficiency, has for that purpose only eight days after the filing of such exceptions within which he may submit to the same without reference.

If a defendant, not being in contempt, submit to exceptions to his answer for insufficiency, before the plaintiff has obtained an order to refer the same to the Master, he is allowed three weeks from the date of the submission, within which he is to put in his further answer to the bill.

The plaintiff having filed exceptions for insufficiency to a defendant's answer, is not to procure an order to refer them to the Master before the expiration of eight days from the filing of such exceptions, unless in a case of election, he is required, by notice in writing, from such defendant to procure the Master's report on such exceptions in four days.

The plaintiff having filed exceptions for insufficiency to a defendant's answer, is, to procure an order to refer them to the Master after the expiration of eight days, but within fourteen days from the filing of such exceptions, otherwise the answer will be deemed sufficient.

The plaintiff having obtained an order for referring to the Master exceptions to a defendant's answer for insufficiency, or for referring back a defendant's answer on former exceptions for insufficiency, is to obtain the Master's report thereon within fourteen days from the date of the order, or within such further time as the Master shall allow, otherwise the answer will be deemed sufficient.

The plaintiff having shown exceptions to a defendant's answer for insufficiency as cause against dissolving an injunction, is to obtain the Master's report thereon, within eight days after the date of the order to refer them, otherwise the injunction is dissolved.

After the filing of exceptions to a defendant's answer for insufficiency, and any further answer put in, the plaintiff has fourteen days from the filing of such further answer, within which he may refer the answer back to the Master on the old exceptions, otherwise such further answer is deemed sufficient.

If, after a reference of exceptions for insufficiency, or a reference back of the answer on the old exceptions, a defendant, not being in contempt, submits to answer, or the Master finds the answer to be insuffi-

cient; the Master is, in such cases, to appoint the time within which such defendant is to put in his further answer. If such defendant do not obtain time from the Master, or do not answer within the time which the Master allows, the plaintiff may sue out process of contempt against such defendant. *Orders, 8th May, 1845, clauses 22 to 30, both inclusive of 16th Order.*

In suo quisque negotio hebetior est quam in alieno. Co. Lit. 377.—(Every one is more dull in his own business than in the business of another.)

INSUPER, debiting or charging a person in an account. *Exchequer Term.*

INSURANCE, the act of providing against a possible loss, by entering into a contract with one who is willing to give assurance, that is, to bind himself to make good such possible loss upon the contingency of its occurrence. In this contract, the chances of benefit are equal to the insurer and the insured. The first actually pays a certain sum, and the latter undertakes to pay a larger, if an accident should happen. The one, therefore, renders his property secure; the other receives money with the probability that it is clear gain. The instrument by which the contract is made is denominated a policy, and the stipulated consideration a premium. It is generally made to provide against losses by fire, or risks at sea.

Insurances are effected sometimes by societies, and sometimes by individuals, the risk being in either case diffused amongst a number of persons. Companies formed for carrying on this business have generally a large subscribed capital, or such a number of proprietors as enables them to raise, without difficulty, whatever sums may at any time be required to make good losses. Societies of this sort do not limit their risks to small sums; that is, they do not often refuse to insure a large sum upon a ship, a house, a life, &c. The magnitude of their capitals affords them the means of easily defraying a heavy loss; and their premia being proportioned to their risks, their profit is, on an average, independent of such contingencies.

1. The practice of marine insurance, no doubt, from the extraordinary hazard to which property at sea is exposed, seems to have long preceded insurances against fire and upon lives.

While all fire and life insurances are made at the risk of companies, which include within themselves the desirable requisites of security, wealth, and numbers; a large proportion of marine insurances is made at the risk of individuals.

Till 1824, all firms and companies, with the exception of the two chartered companies—the Royal Exchange and London—were prohibited by law from taking marine insurances. Towards the latter part of that year the prohibition was removed, and the business of marine insurance was placed on the same legal footing as other descriptions of business. There are at present seven

marine insurance companies in London—viz., the two old chartered companies, the Royal Exchange and London; two established immediately upon the passing of the act of the year 1824, the Alliance and the Indemnity Mutual; the Marine, established in 1836; and the General Maritime and Neptune, established in 1839.

The individual underwriters meet in a subscription room at Lloyds. The joint affairs of the subscribers to these rooms are managed by a committee chosen by the subscribers. Agents (who are commonly styled Lloyd's agents) are appointed in all the principal ports of the world, who forward regularly to Lloyds, accounts of the departures from and arrivals at their ports, as well as of losses and other casualties; and, in general, all such information as may be supposed of importance towards guiding the judgments of the underwriters. These accounts are regularly filed, and are accessible to all the subscribers. The principal arrivals and losses are besides posted in two books, placed in two conspicuous parts of the room; and also in another book, which is placed in an adjoining room, for the use of the public at large.

The rooms are open from ten o'clock in the morning till five o'clock in the afternoon; but the most considerable part of the business is transacted between one and four.

4. Those merchants and shipowners who manage their own insurance business, procure blank policies at the government office, or of their stationers, which they fill up so as to meet the particular object in view, and submit them to those underwriters with whom they are connected, by whom they are subscribed or rejected. Each policy is handed about in this way until the amount required is complete.

Many merchants and shipowners do not transact their own insurance business. They give their orders for insurance to others, who undertake it for them, and are responsible for its proper management. These latter persons are called insurance brokers, and some of them manage the business of a number of principals. To them likewise are transmitted the orders for insurance from the outports and manufacturing towns. They charge the whole premium to their principals, and their profit consists in 5 per cent. upon the premium, 12 per cent. upon the money that they pay to the underwriters, and $\frac{1}{2}$ per cent. that they deduct from all the claims which they recover from the underwriters.

But where the business is transacted with a company, this inducement to consign their insurance business to brokers, if not destroyed altogether, is, at all events, very much diminished. Any party having property to insure, has merely to go to the manager of the company and state the particulars of the risk to be insured; the premium being agreed upon, the manager writes out a memorandum for the policy, which the party signs, and he is thus effectually insured.

Besides the individual underwriters and companies above noticed, there are clubs or associations formed by ship-owners, who agree, each entering his ships for a certain amount, to divide among themselves one another's losses. These clubs are institutions of long standing; but, since the alteration of the law in 1824, appear to be on the decline. Their formation originated in a two-fold reason:—1st, that the underwriters charged premia more than commensurate with the risk; and, 2ndly, that they did not afford adequate protection.

The losses against which a merchant or shipowner are not protected by an insurance in this country, are the following:—

1. Acts of our own Government. 2. Breaches of the revenue laws. 3. Breaches of the law of nations. 4. Consequences of deviation. 5. All losses arising from unseaworthiness. Unseaworthiness may be caused in various ways, such as want of repair, want of stores, want of provisions, want of nautical instruments, insufficiency of hands to navigate the vessel, or incompetency of the master. 6. All loss arising from unusual protraction of the voyage. 7. All loss to which the shipowner is liable when his vessel does damage to others. 8. Average clause.—This description of loss is described in the following clause of the policy:—"Corn, fish, salt, seed, flour, and fruit, are warranted free from average, unless general, or the ship be stranded; sugar, tobacco, hemp, flax, hides, and skins, are warranted free from average under five per cent., unless general, or the ship be stranded; and all other goods, also the ship and freight are warranted free from average under three per cent., unless general, or the ship be stranded."

Average is a name applied to certain descriptions of loss, to which the merchant and shipowner are liable. There are two kinds of average—general and particular:

(a) General average comprehends all loss arising out of a voluntary sacrifice of a part of either vessel or cargo, made by the captain for the benefit of the whole. Thus, if a captain throw part of his cargo overboard, cut from an anchor and cable, or cut away his masts, the loss so sustained being voluntarily submitted to for the benefit of the whole, is distributed over the value of the whole ship and cargo, and is called general average.

(b) Particular average comprehends all loss occasioned to ship, freight, and cargo, which is not of so serious a nature as to debar them from reaching their port of destination, and when the damage to the ship is not so extensive as to render her unworthy of repair.

Losses where the goods are saved, but in such a state as to be unfit to forward to their port of destination, and where the ship is rendered unfit to repair, are called "partial or salvage loss." The leading distinction between particular average, and salvage loss

is, that, in the first, the property insured remains the property of the assured; the damage sustained, or part thereof, as the case may be, being made good by the insurer: and, in the second, the property insured is abandoned to the insurer, and the value insured claimed from him, he retaining the property so abandoned, or its value.

All the elements that can by possibility enter into general average may be classed under four heads:—1. Sacrifice of part of the ship and stores. 2. Sacrifice of part of the cargo and freight. 3. Remuneration of service required for general preservation. 4. Expense of raising money to replace what has been sacrificed, and to remunerate services.

II. Insurance against fire is a contract of indemnity, by which the insurer, in consideration of a certain premium received by him, either in a gross sum or by annual payments, undertakes to indemnify the insured against all loss or damage he may sustain in his houses or other buildings, stock, goods, and merchandise, by fire, during a specified period.

Insurances against fire are hardly ever made by individuals, but almost always by joint stock companies; of which there are several in all the considerable towns throughout the empire.

The conditions on which the different offices insure, are contained in their proposals, which are printed on the back of every policy; and it is in most instances expressly conditioned that they undertake to pay the loss, not exceeding the sum insured, "according to the exact tenor of their printed proposals."

It often occurs that no one office will insure to the full amount required by an individual, who has a large property; and in such a case the party to cover his whole interest, is obliged to insure at different offices. But, in order to prevent the frauds that might be practised by insuring the full value in various offices, there is, in the proposals issued by all the companies, an article which declares that persons insuring must give notice of any other insurance made elsewhere upon the same houses or goods, that the same may be specified and allowed by indorsement on the policy, in order that each office may bear its rateable proportion of any loss that may happen: and unless such notice be given of each insurance to the office where another insurance is made on the same effects, the insurance made without such notice will be void.

The risk commences in general from the signing of the policy, unless there be some other time specified. Policies of insurance may be annual, or for a term of years at an annual premium: and it is usual for the office, by way of indulgence, to allow fifteen days after each year for the payment of the premium for the next year in succession; and provided the premium

be paid within that time, the insured is considered as within the protection of the office. A policy of insurance is not in its nature assignable, nor can it be transferred without the express consent of the office.

Insurances are generally divided into common, hazardous, and doubly hazardous.

(a) *Common insurances.*

1. Buildings covered with slates, tiles, or metals, and built on all sides with brick or stone, or separated by party walls of brick or stone, and wherein no hazardous trade or manufacture is carried on, or hazardous goods deposited.

2. Goods in buildings as above described, such as household goods, plate, jewels in private use, apparel, and printed books; liquors in private use, merchandise, stock, and utensils in trade, not hazardous. At 1s. 6d. per cent. per annum, with certain exceptions.

(b) *Hazardous insurances.*

1. Buildings of timber or plaster, or not wholly separated by partition-walls of brick or stone, or not covered with slates, tiles, or metals, and thatched barns and out-houses having no chimney, nor adjoining to any building having a chimney; and buildings falling under the description of common insurance, but in which hazardous goods are deposited, or some hazardous trade or manufacture is carried on.

2. Ships and craft, with their contents (lime barges, with their contents, alone excepted). At 2s. 6d. per cent. per annum, with certain exceptions.

(c) *Doubly hazardous insurances.*

1. All thatched buildings having chimneys, or communicating with or adjoining to buildings having one, although no hazardous trade shall be carried on, nor hazardous goods deposited therein: and all hazardous buildings, in which hazardous goods are deposited, or hazardous trades carried on.

2. All hazardous goods deposited in hazardous buildings and in thatched buildings having no chimney, nor adjoining to any building having a chimney. At 4s. 6d. per cent. per annum, with certain exceptions.

That part of the business of life insurance which consists of granting annuities upon lives, is treated of under interest and annuities, so that we have only to treat in this place of the insurance of sums payable at the death of the insurers or their nominees.

III. Life insurance companies are divided into three classes. The first class consists of joint stock companies, who undertake to pay fixed sums upon the death of the individuals insuring with them; the profits made by such companies being wholly divided among the proprietors. Of this class are the Royal Exchange, Globe, &c. The second class are also joint stock companies with proprietary bodies; but instead of undertaking, like the former, to pay certain specified sums upon the death of the insured, they allow the latter to participate to a certain extent along with the proprietors in the profits made

by the business. The mode in which this sort of *mixed* companies allot the profits granted to the insured, is not the same in all; and in some, the principle on which the allotment is made is not disclosed. The Rock, Sun, Alliance, Guardian, Atlas, &c., belong to this mixed class. The third species of company is that which is formed on the basis of mutual insurance. In this sort of company there is no proprietary body distinct from the assured; the latter share among themselves the whole profits of the concern, after deducting the expenses of management. The Equitable Society, the Amicable, the Norwich Life, &c., belong to this class.

In order to hinder the growth of gambling transactions upon life insurance, it was enacted by 14 Geo. III., c. 48, that no insurance shall be made by any person or persons, bodies politic or corporate, on the life or lives of any person or persons, or any other event or events whatsoever, where the person or persons for whose use or benefit, or on whose account such policy or policies shall be made, *shall have no interest*, or by way of gaining or wagering; and that every insurance made contrary to the true intent and meaning of this act, shall be null and void to all intents and purposes whatsoever. § 1.

It shall not be lawful to make any policy or policies on the life or lives of any person or persons, or other event or events, without inserting in such policy or policies, the name or names of the person or persons interested therein, or for what use, benefit, or on whose account such policy is so made or underwrote. § 2. In all cases where the insured has an interest in such life or lives, event or events, no greater sum shall be recovered or received from the insurer or insurers than the amount or value of the interest of the insured in such life or lives, or other event or events. § 3. *McCulloch's Comm. Dict.*

INTAKERS, receivers of stolen goods.

INTENDANT, a person who has the charge, direction, and management of some office or department.

INTENDMENT OF LAW [*intellectus legis*], the understanding, intention, and true meaning of law. 1 Inst. 78.

INTENTIONE, a writ that lay against him who entered into lands after the death of a tenant in dower, or for life, &c., and holds out to him in reversion or remainder. *F.N.B.* 203.

Intentio cæca, mala. 2 Buls. 179.—(A hidden intention is bad.)

Intentio inservire debet legibus, non leges intentioni. Co. Lit. 314.—(Intention ought to be subservient to the laws; not the laws to the intention.)

Intentio mea imponit nomen operi meo. Hob. 123.—(My intent gives a name to my act.)

INTER ALIA (amongst other things).

INTER CANEM ET LUPUM (between the dog and the wolf), twilight; called also

mock shadow, daylights' gate, and betwixt hawk and buzzard. *Cowell.*

INTERCOMMONING, where the commons of two manors lie together, and the inhabitants of both have time out of mind depastured their cattle promiscuously in each. See **COMMON**.

Inter cuncta leges et percunctabere doctos. Co. Lit. 232.—(Among so many things, you will even question laws and learned men.)

INTERDICT, INTERDICTION, an ecclesiastical censure prohibiting the administration of divine ceremonies, either to particular persons or in particular places, or both. This severe censure has been long disused.

In the civil law, it is a prohibition nearly equivalent to the injunction in Chancery.

INTERDICTED OF FIRE AND WATER, a banishment by which an order was given, that no man should receive the person banished into his house, but should deny him fire and water, the two necessities of life.

INTERESSE TERMINI, an executory interest, being a right of entry which a lessee acquires in land by virtue of a demise. It cannot, before entry, be enlarged by a release from the lessor (*except* the term be created by an assurance under the Statute of Uses, which does not require an entry), because the lessee has no actual estate; yet such a release would extinguish the rent and also the *interesse termini*. The lessee can assign this interest, but it will not merge in the freehold subsequently acquired. *Watk. Conv.* 34.

INTEREST, the sum of money paid or allowed for the loan or use of some other sum, lent for a certain time according to a fixed rate. The sum lent is called the *principal*, the sum agreed on as interest, is called the *rate per cent.*, and the principal and interest added together is called the amount. It is distinguished into simple and compound. 1. *Simple* interest is that which is paid for the principal or sum lent, at a certain rate or allowance made by law, or agreement of parties. 3. *Compound* interest is when the arrears of interest of one year is added to the principal, and the interest for the following year is calculated on that accumulation. See **USURY**.

At Athens, Solon, amongst other reforms, abolished the law by which a creditor was empowered to sell or enslave a debtor, and prohibited the lending of money upon a person's own body (*Plut. Sol.*, c. 15). No other restriction, we are told, was introduced by him, and the rate of interest was left to the discretion of the lender. (*Lys in Theom.* 17). The only case in which the rate was prescribed by law was in the event of a man separating from his lawful wife, and not refunding the dowry he had received with her. Her trustees or guardians could in that case proceed against him for the principal, with lawful interest, at the rate of eighteen per cent.

The Licinian laws, among the Romans, by which the grievances of debtors were to a

certain extent redressed, did not lay any restriction on the rate of interest that might be legally demanded; and it is clear from various circumstances (*Niebuhr* ii. p. 603), that the scarcity of money at Rome after the taking of the city by the Gauls had either led to the actual abolition of the old uncial rate (*unciarium fenus*) of the Twelve Tables, or caused it to fall into disuse. Nine years, however, after the passing of these laws (*Liv.* vii. 16) the rate of the Twelve Tables was re-established, and any higher rate prohibited by the bill (*rogatio*) of the tribunes Duilius and Mænius.

In cases of *fenus nauticum*, however, or bottomry, as the risk was the money-lenders, he might demand any interest he liked while the vessel on which the money was lent was at sea; but after she reached harbour, and while she was there, no more than the usual rate of 12 per cent. on the *centesima* could be demanded.

Justinian made it the legal rule for *fenus nauticum* under all circumstances. *Smith's Dict. of Antiq.*

Also, not only a chattel real, as a lease for years, or a future estate (1 *Inst.* 46), but also any estate, right, or title in realty. 1 *Inst.* 345.

INTEREST UPON INTEREST, compound interest.

Interest reipublicæ ut pax in regno conservetur et quæcunque paci adversentur providè declinetur. 2 *Inst.* 158.—(It benefits the state, that peace be preserved in the kingdom, and that whatever things are averse to peace, be prudently declined.)

Interest reipublicæ ne maleficia remaneant impunita. *Jenk. Cent.* 31.—(It concerns the state, lest crimes remain unpunished.)

Interest reipublicæ quod homines conserventur. 12 *Co.* 62.—(It concerns the state, that men be preserved.)

Interest reipublicæ res judicatas non rescindi. 2 *Inst.* 359.—(It concerns the state, that things adjudicated be not rescinded.)

Interest reipublicæ suprema hominum testamenta rata haberi. Co. Lit. 236.—(It concerns the state, that men's last wills be confirmed.)

Interest reipublicæ ut carceres sint in tuto. 2 *Inst.* 589.—(It concerns the state, that prisons be in security.)

Interest reipublicæ ut quilibet re suâ bene utatur. 6 *Co.* 37.—(It concerns the state, that every one uses his property properly.)

Interest reipublicæ ut sit finis litium. Co. Lit. 303.—(It concerns the state, that there be an end of lawsuits.)

INTERESTED WITNESS, a witness is not now excluded from giving evidence by reason of his interest in the matter in question. 6 & 7 *Vict.*, c. 85, § 1.

INTERLINEATION, an alteration of a written instrument; and insertion of any matter after it is engrossed or executed. A deed may be avoided by interlineation, unless a memorandum be made thereof at the time of the execution or attestation. If there be any interlineation or erasure in the *jurat* of

an affidavit, that affidavit cannot be read; but an erasure over the *jurat* does not vitiate it. *R. M.*, 37 *Geo. III.*

INTERLOCUTORY, that which is incident and spoken to between the ordinary proceedings in the action or suit, and is not final. Thus, in *equity*, it seldom happens that the first decree can be final and conclude the cause; for, if any matter of fact be strongly controverted, the court is so sensible of the deficiency of trial by written depositions, that it will not bind the parties thereby, but pronounces an interlocutory decree, usually directing the matter to be tried by jury in a court of common law. So at *common law* a judgment in default of the defendant's not pleading is interlocutory in all cases in which the sole object of the action is damages, and not until the damages are ascertained by a writ of enquiry before the sheriff, or a rule to compute before the Master, can a final judgment be signed.

INTERLOPER, a person who intercepts the trade of a mercantile company.

INTERNATIONAL COPYRIGHT. By 1 & 2 *Vict.*, c. 59, regulation has been, for the first time, made on this subject; it provides that her Majesty may, by order in council, allow to the authors of books first published in any foreign country, in such order specified, the sole liberty of printing and reprinting them within the British dominions for a specified term, provided, at the time of the order, a reciprocal protection shall have been granted by the government of the country in question, to books first published in her Majesty's dominions. But this provision is made without prejudice to the right of printing and selling translations of foreign works; and it is also declared, that except, as authorized by that act, the author of a book hereafter first published out of her Majesty's dominions, shall have no claim whatever to the copyright thereof within these dominions.

INTERNATIONAL LAW. The law of nations, strictly so called, was in a great measure unknown to antiquity, and is the slow growth of modern times, under the combined influence of christianity and commerce. It is well known that when the Roman empire was destroyed, the christian world was divided into many independent sovereignties, acknowledging no common head and connected by no uniform civil polity. The invasions of the barbarians of the north, the establishment of the feudal system in the middle ages, and the military spirit and enterprise cherished by the crusades, struck down all regular commerce, and surrendered all private rights and contracts to mere despotic power. It was not until the revival of commerce on the shores of the Mediterranean, and the revival of letters and the study of the civil law by the discovery of the Pandects, had given an increased enterprise to maritime navigation, and a consequent importance to maritime contracts, that anything like a system of

international justice began to be developed. It first assumed the modest form of commercial usages; it was next promulgated under the more imposing authority of royal ordinances; and it finally became, by silent adoption, a generally connected system, founded in the natural convenience and asserted by the general comity of the commercial nations of Europe. The system, thus introduced for the purposes of commerce, has gradually extended itself to other objects, as the intercourse of nations has become more free and frequent. New rules, resting on the basis of general convenience and enlarged sense of national duty, have, from time to time, been promulgated by jurists, and supported by courts of justice, by a course of juridical reasoning, which has commanded almost universal confidence, respect, and obedience, without the aid, either of municipal statutes, or of royal ordinances, or of international treaties.

It is plain that the laws of one country can have no intrinsic force, *proprio vigore*, except within the territorial limits and jurisdiction of that country. They can bind only its own subjects, and others who are within its jurisdictional limits; and the latter only while they remain therein. No other nation, or its subjects, are bound to yield the slightest obedience to those laws. Whatever extra-territorial force they are to have, is the result, not of any original power to extend them abroad, but of that respect, which, from motives of public policy, other nations are disposed to yield to them, giving them effect, as the phrase is, *sub mutua vicissitudinis obtentu*, with a wise and liberal regard to common convenience and mutual benefits and necessities. Boullenois has laid down the same exposition as a part of his fundamental maxims. "Of strict right," says he, "all the laws made by a sovereign have no force or authority except within the limits of his domains. But the necessity of the public and general welfare has introduced some exceptions in regard to civil commerce. *De droit étroit, toutes les lois, que fait un souverain, n'ont force et autorité que dans l'étendue de sa domination; mais la nécessité du bien public et général des nations a admis quelques exceptions dans ce qui regarde le commerce civil* (1 *Boul. Prin. Gén.* 6, p. 4). And, accordingly, it is laid down by all publicists and jurists as an incontestible rule of public law, that one may with impunity disregard the law pronounced by a magistrate beyond his own territory. *Extra territorium jus dicenti impune non paretur*, is the doctrine of the Digest (l. 2, t. 1, l. 20); and it is equally as true in relation to nations, as the Roman law held it to be in relation to magistrates. The other part of the rule is equally applicable. *Idem est, et si supra jurisdictionem suam velit jus dicere*; for he exceeds his proper jurisdiction, when he seeks to make it operate extra-territorially as a matter of power. Vattel has deduced a similar conclusion from the general inde-

pendence and equality of nations, very properly holding that relative strength or weakness cannot produce any difference in regard to public rights and duties; that whatever is lawful for one nation, is equally lawful for another; and whatever is unjustifiable in one, is equally so in another. And he affirms in the most positive manner (what indeed cannot well be denied), that sovereignty, united with domain, establishes the exclusive jurisdiction of a nation within its own territories, as to controversies, to crimes, and to rights arising therein. *B. 2, c. 7, § 84.*

The first and most general maxim or proposition in international jurisprudence is that which has been already adverted to: that every nation possesses an exclusive sovereignty and jurisdiction within its own territory.

Another maxim or proposition is, that no state or nation can, by its laws, directly affect or bind property out of its own territory, or bind persons not resident therein, whether they are natural-born subjects, or others. This is a natural consequence of the first proposition.

From these two maxims or propositions there flows a third, and that is, that whatever force and obligation the laws of one country have in another, depend solely upon the laws and municipal regulations of the latter; that is to say, upon its own proper jurisprudence and polity, and upon its own express or tacit consent.

Huberus has laid down three axioms, which he deems sufficient to solve all the intricacies of the subject. The first is, that the laws of every empire have force only within the limits of its own government, and bind all who are subjects thereof, but not beyond those limits. The second is, that all persons who are found within the limits of a government, whether their residence is permanent or temporary, are to be deemed subjects thereof. The third is, that the rulers of every empire, from comity, admit that the laws of every people, in force within its own limits, ought to have the same force everywhere, so far as they do not prejudice the powers or rights of other governments, or of their citizens. *Lib. 1, tit. 3, De Conflictu Legum, § 2, p. 538; Story's Conf. of Laws, cc. i. & ii.*

INTERPLEADER ACT, 1 & 2 Wm. IV., c. 58. This statute comprehends two classes of persons:—

1. Persons generally.

After reciting that “it often happens that a person sued at law for the recovery of money or goods, wherein he has no interest, and which are also claimed of him by some third party, has no means of relieving himself from such adverse claims but by a suit in equity against the plaintiff and such third party, usually called a bill of interpleader, which is attended with expense and delay,” enacts, “that upon application made by or on behalf of any defendant sued in any of his Majesty’s Courts of law at Westminster,

or in the Court of Common Pleas of the county palatine of Lancaster, or in the Court of Pleas of the county palatine of Durham, in any action of *assumpsit*, *debt*, *detinue*, or *trover*, such application being made after declaration and before plea, by affidavit, or otherwise, shewing that such defendant does not claim any interest in the subject-matter of the suit, but that the right thereto is claimed, or supposed to belong to some third party, who has sued, or is expected to sue, for the same; and that such defendant does not in any manner collude with such third party, but is ready to bring into court, or to pay or dispose of the subject-matter of the action, in such manner as the court, or any Judge thereof, may order or direct; it shall be lawful for the court, or any Judge thereof, to make rules or orders calling upon such third party to appear and to state the nature and particulars of his claim, and maintain or relinquish his claim, and upon such rule or order, to hear the allegations as well of such third party as of the plaintiff, and in the meantime to stay the proceedings in such action, and finally, to order such third party to make himself defendant in the same or some other action, or to proceed to trial on one or more feigned issue or issues (but see *FEIGNED ISSUE*), and also to direct which of the parties shall be plaintiff or defendant on such trial, or with the consent of the plaintiff and such third party, their counsel or attornies to dispose of the merits of their claims and determine the same in a summary manner, and to make such other rules and orders therein, as to costs and all other matters, as may appear to be just and reasonable.” § 1.

“The judgment in any such action or issue as may be directed by the court or Judge, and the decision of the court or Judge in a summary manner shall be final and conclusive against the parties, and all persons claiming by, from, or under them.” § 2.

“If such third person shall not appear upon such rule or order to maintain or relinquish his claim, being duly served therewith, or shall neglect or refuse to comply with any rule or order to be made after appearance, it shall be lawful for the court or a Judge to declare such third party, and all persons claiming, by, from, or under him, to be for ever barred from prosecuting his claim against the original defendant, his executors or administrators (saving nevertheless the right or claim of such third party against the plaintiff), and thereupon to make such order between such defendant and the plaintiff, as to costs and other matters, as may appear just and reasonable.” § 3.

“No order shall be made in pursuance of this act by a single Judge of the Court of Pleas of the said county palatine of Durham, who shall not also be a Judge of one of the said courts at Westminster; and that every order to be made in pursuance of this act by a single Judge, not sitting in open court, shall be liable to be

rescinded or altered by the court, in like manner as other orders made by a single Judge." § 4.

"If upon application to a Judge, in the first instance, or in any latter stage of the proceedings, he shall think the matter more fit for the decision of the court, it shall be lawful for him to refer the matter to the court, and thereupon the court shall and may hear and dispose of the same, in the same manner as if the proceeding had originally commenced by rule of court, instead of the order of a Judge." § 5.

"All rules, orders, matters, and decisions to be made and done in pursuance of this act (except only the affidavits to be filed), may, together with the declaration in the cause (if any), be entered of record, with a note in the margin expressing the true date of such entry, to the end that the same may be evidence in future times, if required, and to secure and enforce the payment of costs directed by any such rule or order; and every such rule or order so entered, shall have the force and effect of a judgment (except only as to becoming a charge on any lands, tenements, and hereditaments), and in case any costs shall not be paid within fifteen days after notice of the taxation and amount thereof given to the party ordered to pay the same, his agent or attorney, execution may issue for the same by *fiery fucias*, or *capias ad satisfaciendum*, adapted to the case, together with the costs of such entry, and of the execution, if by *fiery fucias*; and such writ and writs may bear teste on the day of issuing the same, whether in term or vacation; and the sheriff or other officer executing any such writ, shall be entitled to the same fees, and no more, as upon any similar writ grounded upon a judgment of the court." § 7.

This act does not take away the remedy by bill of interpleader; and if proceedings in equity have been instituted, the court will not afterwards interfere.

2. Sheriffs and other officers.

The act, after reciting that "difficulties sometimes arise in the execution of process against goods and chattels, issued by or under the authority of the said courts, by reason of claims made to such goods or chattels by assignees of bankrupts, and other persons, not being the parties against whom such process has issued, whereby sheriffs and other officers are exposed to the hazard and expense of actions; and it is reasonable to afford relief and protection in such cases to such sheriffs and other officers," enacts, "that when any such claim shall be made to any goods or chattels taken, or intended to be taken in execution under any such process, or to the proceeds or value thereof, it shall and may be lawful to and for the court from which such process issued, upon application of such sheriff or other officer, made before or after the return of such process, and as well before as after any action brought against such sheriff or other officer,

to call before them, by rule of court, as well the party issuing such process as the party making such claim, and thereupon to exercise for the adjustment of such claims, and the relief and protection of the sheriff or other officer, all or any of the powers or authorities hereinbefore contained, and make such rules and decisions as shall appear to be just, according to the circumstances of the case, and the costs of all such proceedings shall be in the discretion of the court." § 6.

By the 1 & 2 Vict., c. 45, § 2, "it shall be lawful for any Judge of the Courts of Queen's Bench, Common Pleas, or Exchequer, with respect to any such process issued out of any of those courts, or for any Judge of the said Court of Common Pleas of the county palatine of Lancaster, or Court of Pleas of the county palatine of Durham (being also a Judge of one of the said three superior courts), with respect to process issued out of the said courts of Lancaster and Durham respectively, to exercise such powers and authorities for the relief and protection of the sheriff or other officer, as may, by virtue of the said last-mentioned act be exercised by the said several courts respectively, and to make such order therein as shall appear to be just, and the costs of such proceedings shall be in the discretion of such Judge."

INTERPLEADER, bill of. It is resorted to where a person claims no right in opposition to the rights claimed by the persons against whom the bill is exhibited, but prays the decree of the court touching the rights of those persons for the safety of the person exhibiting the bill. The plaintiff must annex an affidavit, that there is no collusion between him and any of the parties, and, if it be a monetary demand, he must bring it into court, or at least offer to do so. If the defendants do not deny the statements of the bill, the ordinary decree is, that the defendants do interplead, and the plaintiff then withdraws from the suit. *Story's Eq. Plead.* 237.

Interpretare et concordare leges legibus est optimus interpretandi modus. 9 Co. 169.—

(To interpret and to reconcile the laws to laws, is the best mode of interpretation.)

Interpretatio fienda est ut res magis valent quam pereat. Jenk. Cent. 198.—(That interpretation is to be made, that the thing may rather stand than fall.)

Interpretatio talis in ambiguis semper fienda, est, ut evitetur inconveniens et absurdum. 4 Inst. 328.—(In ambiguous things, such an interpretation is to be made, that what is inconvenient and absurd is to be avoided.)

INTERREGNUM, the time during which a throne is vacant in elective kingdoms; for in such as are hereditary, like that of England, there can be no interregnum, the sovereign, in his artificial capacity, never dying.

INTERROGATORY, a question in writing demanded of a witness, who answers it upon oath, which answer is taken down in writing,

and being signed by the witness, is called a deposition.

The Interrogatory Act, 1 Wm. IV., c. 22, extends the provisions of 13 Geo. III., c. 63, relating to examination of witnesses in India, to all other colonies and places under the dominion of the Crown, and to all actions in the courts at Westminster.

It is also a chief part of a bill in equity. See BILL IN CHANCERY.

INTERRUPTION, the true proprietor claiming his right during the course of prescription. *Scotch Term*.

Interruptio multiplex non tollit prescriptionem semel obtentam. 2 Inst. 654.—(Frequent interruption does not take away a prescription once secured.)

INTESTATE, a person who has left no will, or, leaving a will, nominates no executors; or, the executors whom he has named refusing to act.

In testamentis ratio tacita non debet considerari sed verba solum spectari debent ideo per divinationem mentis a verbis recedere durum est.—(In wills, a silent meaning ought not to be considered, but the words alone ought to be looked to; so hard is it to recede from the words by guessing of the intention.)

INTOL and **UTTOL**, toll or custom paid for things imported or exported.

IN TOTIDEM VERBIS (in so many words).

INTRARE MARISCUM, to drain a marsh or low ground, and convert it into herbage or pasture.

In traditionibus scriptorum, non quod dictum est sed quod gestum est inspicitur. 9 Co. 137.—(In the traditions of writers, not what is said, but what is done is regarded.)

IN TRANSITU (during the passage). See STOPPAGE IN TRANSIT.

INTRINSECUM SERVITIUM, common and ordinary duties within the lord's court. *Kenn. Glos.*

INTROMISSION, the assuming possession of property belonging to another, either on legal grounds or without such authority, which latter is termed *vitious intromission*. *Scotch Law*.

INTRUSION, the entry of a stranger after a particular estate of freehold is determined before him in reversion or remainder; and it happens where a tenant for life dies seised of certain lands and tenements, and a stranger enters thereon after such death of the tenant, and before any entry of him in remainder or reversion, such stranger is, technically, an intruder.

The writ of entry on intrusion is abolished by 3 & 4 Wm. IV., c. 27. See ABATEMENT.

INTRUSION, information of. See INFORMATION.

INURE, to take effect.

Inutilis labor, et sine fructu, non est effectus legis. Co. Lit. 127.—(Useless labour, and without fruit, is not the effect of law.)

INVADIARE, to pledge or mortgage lands.

IN VADIO, in gage; in pledge.

INVASIONES, the inquisition of serjeancies and knights' fees.

INVECTA ET ILLATA, articles subject to certain liens or services. *Scotch Law*.

INVENTION, title by, a writ to patent rights and copyrights. See COPYRIGHT, and LETTERS PATENT.

Inveniens libellum famosum et non corrumpens punitur. Moor, 813.—(He who finds a notorious libel, and does not destroy it, is punished.)

INVENTIONES, treasure-trove.

INVENTORY, a list or schedule, containing a true description of goods and chattels, or furniture, &c., made upon a sale, or by an executor of his testator's effects. See EXECUTOR.

IN VENTRE SA MERE (in his mother's womb). See ACCUMULATION.

In verbis non verba sed res et ratio querenda est. Jenk. Cent. 132.—(In words, not the words, but the thing and the meaning is to be inquired after.)

INVERITARE, to make proof of a thing.

INVEST, to give possession.

INVESTITURE, the open delivery of seisin or possession.

In vocibus videndum non à quo sed ad quid sumatur. Ellesm. Postn. 62.—(In voices it is to be seen not from what, but to what it is advanced.)

INVOICE [perhaps corrupted from *envoyer*, Fr., send], a written account of the particulars of merchandize shipped or sent to a purchaser, factor, &c., with the value, or prices, or charges annexed.

INVOLUNTARY MANSLAUGHTER, homicide; the consequence of an unlawful act. See HOMICIDE.

I. O. U., a simple mode in writing of acknowledging a debt; it is not a promissory note, but merely an evidence of a debt, which, however, cannot be used as a set-off, unstamped, but since it is not treated as a receipt, it may be given in evidence without being stamped. *Brooks v. Elkins*, 2 Mee. & Wels. 74.

INVULTUACIO, a species of witchcraft, the perpetrators of which were called *vulticoli*, and are described by John of Salisbury, *De Nugis Curial*, l. 1, c. 12. To this superstition Virgil alludes:—

Limus ut hic durescit, et hæc ut ceras liquescit,

Uno eodemque igni, sic nostro Daphni amore.

Of the practice of this superstition, both in England and Scotland, many instances are to be met with; among the most remarkable that of Eleanor Cobham, Duchess of Gloucester, and Stacey, servant to George, Duke of Clarence. *Anc. Inst. Eng.*

Ipsæ leges cupiunt ut jure regantur. Co. Lit. 174.—(The laws themselves require that they should be governed by right.)

IPSO FACTO (by the very act itself).

A censure of excommunication in the ecclesiastical court, immediately incurred for divers offences, after lawful trial.

IRE AD LARGUM, to go at large; to escape; to be set at liberty.

IRELAND, one of the British islands lying westward of Great Britain, from which it is separated by the Irish Sea, or St. George's Channel, and is washed on the north, south, and west by the Atlantic Ocean. It was a distinct kingdom until the 1st January, 1801, when its union with Great Britain took place under the name of "The United Kingdom of Great Britain and Ireland."

39 & 40 Geo. III., c. 67; 40 Geo. III., c. 38.

IRREGULARITY, disorder, going out of rule; also, an impediment to taking holy orders.

IRREPLEVABLE, or **IRREPLEVISABLE**, that which cannot be replevied or delivered on sureties.

IRRITANCY, the becoming void.

IRRITANT CLAUSE, a provision by which certain acts specified in a deed are declared to be null and void. A *resolutive* clause dissolves and puts an end to the right of a proprietor on his committing the acts so declared void. *Scotch Law*.

ISH, expiry; the period of the termination of a tack or lease. *Ibid*.

Is cui cognoscitur.—(He to whom it is acknowledged, i. e., a cognizee.)

Is qui cognoscit.—(He who acknowledges, i. e., a cognizor.)

ISSUABLE PLEA, a plea upon which a plaintiff may take issue, and go to trial upon the merits.

ISSUABLE TERMS, Hilary and Trinity, because in them issues are made up for the assizes. But for town causes, all the four terms are issuable.

ISSUE [*exitus*], used in several senses:—

1. The legitimate offspring of parents.
2. The profits arising from lands or tenements, amerciaments or fines.
3. Event, consequence, evacuation, sending forth.

4. The point in question, at the conclusion of the pleadings between contending parties in a suit or action, when one side affirms and the other denies. The cause is then fit for trial, in order that a decision may be made in the matter. The issue must be material, single, and certain in its quality. An issue is either *in fact*, and tried by a jury, either common or special, or *in law*, and then determined by the court *in banco*. A transcript of all the pleadings is called, in an issue in law, *the demurrer-book*, in an issue in fact, simply *the issue*; it is delivered to the defendant's attorney, who, if it vary from the pleadings, is entitled to make application to the court to have it set right. The record is afterwards made up, if the issue be one in fact, and taken to trial. *Step. Plead.* 24; *Chit. Arch. Prac.* 199. See **FEIGNED ISSUES**.

Ita semper fiat relatio ut valeat dispositio. Cro. Co. 76.—(Let the relation be such that the disposition may stand.)

ITEM, also; a word used when any article is added to the former.

ITINERANT. See **EYRE**.

IULE [*jol*, Got., a sumptuous treat], Christmas. *Encyc. Lond*.

J

JACENS, abeyance.

JACK [*lorica*], a kind of defensive coat-armour, worn by horsemen in war; not made of solid iron, but of many plates fastened together, which some tenants were bound by their tenure to find upon any invasion. *Cowell*.

JACK-KETCH, [supposed to be from *John Ketch*, a noted hangman in 1682, of whom his wife said, that any bungler might put a man to death, but only her husband knew how to make a gentleman die sweetly], the common hangman in the city of London. *Butler's Ghost*, p. 54.

JACOBIN, a gold coin worth 25s., so called from James I., who was King when it was struck. *Encyc. Lond*.

JACTITATION, [*jactito*, Lat., to boast], a false pretention to marriage. *Canon Law Term*.

JACTIVUS, lost by default; tossed away.

JACTUS MERCIUM (a throwing away of goods), jetsam: which see.

JAIL, [*geol*, Fr.], a prison or gaol.

JAILER, a keeper of a prison or gaol.

JAMBEAUX, [*jambe*, leg], leg armour. *Blount*.

JAMPNUM, furze or grass, or ground where furze grows; as distinguished from arable, pasture, or the like. *Cowell*.

JAQUES, small money. *Staund. P. C.*, c. 30.

JEJUNIUM, fasting.

JEMAN, a yeoman. *Cowell*.

JEOFAIL [*j'ai faillé*, Fr., *ego lapsus sum*, Lat., I have failed], an oversight in pleading, or other law proceedings.

The statutes of amendment, whereby slips and mistakes in proceedings are rectified under certain circumstances, are called Statutes of *Jeofails*. They are 14 Edw. III., c. 6; 9 Hen. V., c. 4; 4 Hen. VI., c. 3; 8 Hen. VI., cc. 12, 15; 32 Hen. VIII., c. 30; 18 Eliz., c. 14; 21 Jac. I., c. 11; 16 & 17 Car. II., c. 8; 4 & 5 Anne, c. 16; 9 Anne, c. 20; 5 Geo. I., c. 13.

JERGUER, or **JERQUER**, an officer of the custom house, who superintends the waiters. *Phillips*.

JETSAM, **JETTISON**, or **JETSON** [*jetter*, Fr.], goods or other things which having been cast overboard in a storm, or, after shipwreck, are thrown upon the shore.

JEW, an Hebrew; one who professes Judaism. The name is derived from the patriarch Judah, and given to the descendants of Abraham, by his eldest son, Isaac; who for a long time possessed the land of Palestine, in Asia, and are now dispersed throughout every nation in the world. Our treatment of the Jews, in the early ages of our history, reflects very little credit upon our humanity; and the illiberality of Coke towards them is discreditable to him as a man, utterly disgraceful to him as a Christian. This, and his treatment of his patron, Sir Walter Raleigh, are the great and ineradicable stains upon his memory. And while we must

admire his judicial abilities, and his law writings, we must condemn his bigotry, ingratitude, and intolerance. But a more liberal state of things is being introduced with the progress of education, and no one is so absurd, so illiberal, in these our days, as to deny the right of the Jews to the full privileges of natural born subjects. See 8 & 9 Vict., c. 52, giving them relief as to municipal offices.

JOBBER, one who buys or sells cattle for others; a person who jobs, *i. e.*, works irregularly, and not permanently.

JOCELET, a little manor or farm.

JOCUS PARTITUS, an election between two proposals.

JOHN DOE, the name usually given to the fictitious lessee of the plaintiff in the mixed action of ejectment; but he is sometimes called Goodtitle. So the Romans had their fictitious personages in law proceedings, as *Titius, Seius*. *Juv. Sat.* iv. 13.

JOINDER IN ACTION, coupling two or more persons or matters in a suit or proceeding.

Where a plaintiff has several distinct causes of action, he is allowed to pursue them cumulatively in the same suit, subject to certain rules which the law prescribes as to joining such demands only as are of similar quality or character. Thus, he may join a claim of debt on bond, with a claim of debt on simple contract, and pursue his remedy for both by the same action of debt. So if several distinct trespasses have been committed, these may all form the subject of one declaration in trespass; but, on the other hand, a plaintiff cannot join in the same suit a claim of debt on bond and a complaint of trespass, these being dissimilar in kind. Such different claims or complaints, when capable of being joined, constitute different parts or sections of the declaration, and are known in pleading by the description of several counts. *Step. Plead.* 302.

JOINDER IN PLEADING, accepting the issue, and the mode of trial tendered, either by demurrer, error, or issue in fact, by the opposite party. See **SIMILITER**.

JOINT, combined; shared amongst many; in the same possession.

JOINT-FIAT, a fiat issued against two or more trading partners. Only those partners of a firm who have committed acts of bankruptcy, can be made bankrupts, and none but a joint-creditor can issue a joint-fiat, 6 Geo. IV., c. 16, § 16. Where a joint-fiat is sued out against some of the members of a firm, and another fiat is afterwards sued out against one or more of the remaining partners, the two fiats may be consolidated. Separate creditors may prove under joint-fiats, for the purpose of assenting to or dissenting from the allowance of the certificate of the bankrupt or bankrupts of whom they shall be separate creditors. Joint-creditors cannot receive a dividend under a separate fiat, if there were any joint-property, no matter how trifling; or if there were another

partner, no matter whether solvent or insolvent, unless it were a dividend out of the surplus of the separate estate after payment of all the separate creditors, or unless the joint-creditors agree to pay the separate creditors 20s. in the pound. They may prove to vote in the choice of assignees, and to have an opportunity to show cause against the allowance of the certificate. 6 Geo. IV., c. 16, § 62. But a joint-creditor may prove and receive dividends under any separate fiat sued out by him; and if such separate fiat be annulled for the purpose of proceeding in a joint-fiat against all the partners, a right will be reserved to him to elect, whether he will prove as a joint-creditor or as the separate creditor of the bankrupt against whom he sued out the fiat. Under a joint-fiat none but joint creditors can vote in the choice of assignees. Under a joint-fiat, not only the joint but the separate property passes to the assignees; but under a separate fiat, all the separate property and such part of the joint property as the bankrupt himself would be entitled to pass to the assignees; and where the joint and separate estates are so blended as to render it impracticable to keep them separate, the court will consolidate them. In all joint fiats under which any partner shall have obtained his certificate, if a sufficient dividend shall have been paid upon the joint estate and upon the separate estate of such partner, he shall be entitled to his allowance, although the other partner or partners may not be entitled to any allowance. 6 Geo. IV., c. 16, § 129; *Flather's Arch. Bank.*, tit. *Of Partners*.

JOINT-HEIR, a co-heir.

JOINT-STOCK BANKS, an association having a stock or fund formed by the union of several shares from different persons, for the purpose of receiving and letting out money to interest. They are regulated by 7 Geo. IV., c. 46, &c.

JOINT-STOCK COMPANIES, voluntary societies with transferable shares, defined to be by 7 & 8 Vict., c. 110, every partnership whereof the capital is divided into shares, transferable without the express consent of all the purchasers; and also every such association for the insurance of lives or property, as in the act specified, or for granting annuities on lives, and also friendly societies making assurances on lives to the extent in the act specified; and also every partnership which, at its formation, or by subsequent admission (except any admission subsequent on devolution, or any act in law), shall consist of more than twenty-five members. As to all such companies, other than those which are incorporated or privileged to sue or be sued in the names of their officers and members, which are established in England for any commercial purpose, or purpose of profit, or purpose of insurance (except banking companies, schools, and scientific and literary institutions, friendly societies, not insuring as aforesaid, loan societies, and benefit building societies), a par-

ticular plan of registration is appointed by this act, provisional upon their first projection, and complete upon their actual formation; and such companies, when completely registered, are to be considered as incorporated for a variety of purposes, but so as not in any wise to prevent the liability of the shareholders, if due diligence have been first used to obtain satisfaction out of the corporate property; and regulations are made as to their constitution and the management of their affairs. But as to the individual liability of each particular member, it is provided that it shall last for three years after he shall cease to be a shareholder. By 7 & 8 Vict., c. 111, such registered companies, and all companies regularly incorporated, and companies under the 7 Wm. IV. and 1 Vict., c. 73, and all banking partnerships consisting of more than six persons, shall be liable in certain cases to a fiat in bankruptcy in their corporate or associated capacity, if established for commercial purposes; and the court, acting under such fiat, shall inquire into the cause of the company's failure, and report thereon to the Board of Trade, which may recommend her Majesty to revoke the company's charter; and the attorney-general may also, if the case so require, direct a prosecution of the directors or other officers. This act also contains provisions for winding up the concerns of such companies, and compelling contributions as between the members, under the direction of the Court of Chancery. See 9 & 10 Vict., c. 75. Consult *Wordsworth's Law of Joint Stock Companies*.

JOINT-TENANCY, when lands are conveyed to two or more persons, without any modifying or disjunctive words, they take as joint-tenants. They always take by purchase, and the joint-tenancy may be for life or in fee, but not in tail, unless the donees, being male and female, may lawfully intermarry. Joint-tenants are seised, *per mie et per tout* (*totum conjunctum et nihil per se separatim*). Joint-tenants have one and the same interest, accruing by one and the same conveyance, commencing at one and the same time, and held by one and the same undivided possession. But the grand incident to these estates is the doctrine of survivorship, by which, when two or more persons are seised of a joint estate of inheritance, for their own lives, or *pur autre vie*, or are jointly possessed of any chattel interest, the entire tenancy, upon the decease of any of them, remains to the survivors, and at length to the last survivor; and he shall be entitled to the whole estate, whatever it be, whether an inheritance or a common freehold only, or even a less estate. The exception to this doctrine is in the case of merchant-partners, their wares, merchandise, and stock in trade, survive to the representatives of a deceased partner, in conformity to the maxim, *jus accrescendi inter mercatores locum non habet* (the right of survivorship amongst merchants does not obtain). Judgments and crown debts

against a deceased joint-tenant, do not affect the estate in the hands of the survivor; but if a joint-tenant alien so as to sever the jointure, or if he become the survivor or sole owner by release, prior judgments against him become available charges on the property. So, of dower and courtesy; but the surviving joint-tenant is entitled to emblements, if the jointure continue up to the death of one of them. Joint-tenants may join or sever in making leases, which shall bind, whether made to commence *in presenti*, or *in futuro*. But before a joint-tenant lease his share, he should sever the tenancy. If joint-tenants join in a lease, it is but one lease, for they have but one estate. They may lease to one another. Either of them may mortgage his undivided part or share. This joint-estate may be dissolved by destroying one of its four constituent unities.

The rule in equity, as to this estate, admits of exceptions.

If two persons join in lending money on mortgage, equity says it could not be the intention that the interests should survive, though they take a joint security, each means to lend his own and take back his own. The consequence is, that though the entire legal estate is in the survivor, yet the personal representatives of the deceased mortgagee are necessary parties to a conveyance, in order to obtain a discharge of their share of the mortgage money; and until the money be repaid, the surviving mortgagee is, in equity, a trustee for the personal representatives of his deceased companion. *Carth.* 16.

Another exception in equity is, that when two persons purchase an estate, and advance the purchase money in *unequal* proportions, they are deemed to be tenants in common, although the conveyance may be made to them generally, provided the inequality of the consideration be apparent on the conveyance. 1 *Vern.* 217; *Watk. Conv.* 152; *Burt. Comp.* 12, 111.

JOINTURE, an estate settled upon a wife to be enjoyed after her husband's decease. It has six requisites:—(1), the provision for the wife must take effect in possession or profit immediately after the husband's death; (2), it must be for the term of her own life or greater estate; (3), it must be made to herself and no other for her; (4), it must be made in satisfaction of the whole, and not of part, of her dower; (5), it must be either expressed or averred to be in satisfaction of dower; (6), and it may be made either before or after marriage; but if made after marriage, she may waive it and claim her dower. The Statute of Jointures, 11 Hen. VII., c. 20, is repealed by 3 & 4 Wm. IV., c. 74, § 17, except as to lands comprised in settlements made before the passing of this act.

JOINTRESS, or **JOINTURESS**, she who has an estate settled upon her by her husband, to hold during her life, at least, provided she survive him.

JOKELET [*yokelet*], a little farm, such as requires a small yoke of oxen to till it.

JOURNAL, a day-book, or diary of transactions used by merchants, mariners, tradesmen, &c., in their business.

JOURNALS OF PARLIAMENT, matters *quasi* of record, which are proved by examined copies from the minute books of the Houses of Lords and Commons. *Doug.* 594.

JOURNEY-HOPPERS, regrators of yarn. 8 Hen. VI., c. 5.

JOURNEY-MEN [*journée*, Fr., a day's work], a workman hired by the day, or other given time.

JOURNEY'S ACCOUNTS, the shortest possible time between an abatement of one writ and the issuing of another. *Obsolete.*

JUDAISMUS, usury; also the dwelling-places of the Jews.

Judex ante oculos æquitatem semper habere debet. Jenk. Cent. 58.—(A Judge ought always to have equity before his eyes.)

Judex æquitatem semper spectare debet. Jenk. Cent. 45.—(A Judge ought always to regard equity.)

Judex bonus nihil ex arbitrio suo faciat, nec propositione domesticæ voluntatis, sed juxta leges et jura pronunciet. 7 Co. 27.—(A good Judge may do nothing from his own judgment, or from a dictate of private will; but he will pronounce according to law and justice.)

Judex est lex loquens. 7 Co. 4.—(A Judge is the law speaking.)

Judex habere debet duos sales, salem sapientiæ, ne sit insipidus, et salem conscientiæ ne sit diabolus. 3 Inst. 147.—(A Judge should have two salts: the salt of wisdom, lest he be insipid; and the salt of conscience, lest he be devilish.)

Judex non potest esse testis in propriâ causâ. 4 Inst. 279.—(A Judge cannot be a witness in his own cause.)

Judex non potest injuriam sibi datam punire. 12 Co. 113.—(A Judge cannot punish an injury done to himself.)

Judex non reddit plus quam quod petens ipse requirit. 2 Inst. 286.—(A Judge restores not more than that which he seeking requires.)

JUDGE [*judge*, Fr., *judex*, Lat.], one invested with authority to determine any cause or question in a court of judicature, created by the Queen's letters-patent.

To secure the dignity and political independence of the Judges of the superior courts at Westminster, it is enacted by 12 & 13 Wm. III., c. 2, that their commissions shall be made not as formerly, *durante bene placito*, but *quamdiu bene se gesserint*, and that it may be lawful to remove them on the address of both Houses of Parliament. By 1 Geo. III., c. 23, the Judges are continued in their offices during good behaviour, notwithstanding any demise of the Crown (which was formerly held to vacate their seats), and their full salaries are absolutely secured to them during the continuance of their commissions. Their salaries are regulated by 2 & 3 Wm. IV., c. 116. It is treason to kill a superior Judge; and

it is a highly penal offence to assault or threaten him. *Chit. Arch. Prac.* 5.

JUDGER, a Cheshire jurymen.

JUDGMENT [*jugement*, Fr.], judicial determination.

The several species of judgments are either:—

(a) *Interlocutory*, given in the midst of a cause, upon some plea, proceeding, or default, which is only intermediate and does not finally determine or complete the action. See *INQUIRY, WRIT OF.*

(B) *Final*, putting an end to the action by an award of redress to one party, or discharge of the other, as the case may be.

By rule of all the Courts, of H. T., 2 Wm. IV., r. 67, after the return of a writ of enquiry, judgment may be signed at the expiration of four days from such return, and after a verdict or nonsuit, on the day after the appearance day of the return of the *distringas* or *habeas corpora*, without any rule for judgment, unless, perhaps, when judgment is signed by virtue of a Judge's certificate for speedy execution, under 1 Wm. IV., c. 7, § 2; but the person entitled to the judgment may postpone the signing it as long as he pleases. By 3 & 4 Wm. IV., c. 42, § 18, it is enacted that at the return of any writ of enquiry, or writ for the trial of issues before the sheriff, costs shall be taxed, judgment signed, and execution issued forthwith, unless the sheriff or his deputy before whom such writ of enquiry may be executed, or such sheriff, deputy, or Judge, before whom such trial shall be had, shall certify under his hand upon such writ that judgment ought not to be signed until the defendant shall have had an opportunity to apply to the court for a new inquiry or trial, or a Judge of any of the said courts shall think fit to order that judgment or execution shall be stayed till a day to be named in such order; and the verdict of such jury on the trial of such issues, shall be as valid and of the like force as the verdict of a jury at *Nisi Prius*; and the sheriff, or his deputy, or Judge presiding at the trial of such issues, shall have the like powers with respect to amendment on such trial, as are thereafter given to Judges at *Nisi Prius*.

In the case of a verdict for the plaintiff, the judgment is, that he recover his damages and costs in an action of assumpsit, covenant, case, trover, trespass, or replevin; or his debt, damages, and costs, in an action of debt; or his goods, or their value, and damages and costs, in an action of detinue, and in either case also his costs of increase; or, if the verdict be for the defendant, then that the plaintiff take nothing by his writ, and that the defendant go thereof without day, and also that the defendant recover against the plaintiff the costs and charges he has expended in his defence; and in replevin, the judgment at common law for the defendant is also that he have a return of the goods, or, on the 17 Car. II., c. 7, for the arrears of the rent and costs.

All judgments, whether interlocutory or final, shall be entered of record of the day of the month and year, whether in term or vacation, when signed, and shall not have relation to any other day. Provided that it shall be competent for the Court or a Judge to order a judgment to be entered *nunc pro tunc*. Every pleading, as well as the declaration, shall be intituled of the day of the month and year when the same was pleaded, and shall bear no other time or date; and every declaration and other pleading shall also be entered on the record made up for trial, and on the judgment roll, under the date of the day of the month and year when the same respectively took place, and without reference to any other time or date, unless otherwise specially ordered by the court or a Judge. No entry of continuances, by way of imparlance, *curia advisari vult*, *vicecomes non misit breve*, or otherwise, shall be made upon any record or roll whatever, or in the pleadings, except the *jurata ponitur in respectu*, which is to be retained. Provided that such regulation shall not alter or affect any existing rules of practice as to the times of proceeding in the cause. *H. T.*, 4 *Wm. IV.*, rr. 1, 2, 3.

As soon as judgment is signed by the Master, the party in whose favour it is given, may immediately sue out execution before the judgment is entered on the roll. The judgment, however, must be entered on the roll and filed in the treasury of the court; 1st, in order to enable the plaintiff to bring debt or *scire facias* on the judgment; 2nd, to proceed against the bail on their recognizance; and 3rd, in case a writ of error is brought.

The issue roll was abolished by *H. T.*, 4 *Wm. IV.*, r. 15.

As to judgments affecting lands, &c., the 1 & 2 *Vict.*, c. 110, § 13, enacts, that a judgment already entered up, or to be thereafter entered up, against any person in any of her Majesty's superior courts at Westminster, shall operate as a charge upon all lands, tenements, rectories, advowsons, tithes, rents, and hereditaments (including lands and hereditaments of copyhold or customary tenure), of or to which such person shall, at the time of entering up such judgment, or at any time afterwards, be seised, possessed, or entitled for any estate or interest whatever, at law or in equity, whether in possession, reversion, remainder, or expectancy, or over which such person shall, at the time of entering up such judgment, or at any time afterwards, have any disposing power which he might, without the assent of any other person, exercise for his own benefit, and shall be binding as against the person against whom judgment shall be so entered up, and against all persons claiming under him after such judgment, and shall also be binding as against the issue of his body, and all other persons whom he might, without the assent of any other person, cut off and debar from any remainder, reversion, or other interest

in or out of any of the said lands, tenements, rectories, advowsons, tithes, rents, and hereditaments; and that every judgment-creditor shall have such and the same remedies in a court of equity against the hereditaments so charged, by virtue of this act, or any part thereof, as he would be entitled to in case the person against whom such judgment shall have been so entered up, had power to charge the same hereditaments, and had, by writing under his hand, agreed to charge the same, with the amount of such judgment-debt and interest thereon: provided that no judgment-creditor shall be entitled to proceed in equity to obtain the benefit of such charge until after the expiration of one year from the time of entering up such judgment, or in cases of judgments already entered up or to be entered up, before the time appointed for the commencement of this act (1st October, 1838), until after the expiration of one year from the time appointed for the commencement of this act; nor shall such charge operate to give the judgment-creditor any preference in case of the bankruptcy of the person against whom judgment shall have been entered up, unless such judgment shall have been entered up one year at least before the bankruptcy: provided also that, as regards purchasers, mortgagees, or purchasers who shall have become such before the time appointed for the commencement of this act, such judgment shall not affect lands, tenements, or hereditaments, otherwise than the same would have been affected by such judgment if this act had not passed: provided also, that nothing therein contained shall be deemed or taken to alter or affect any doctrine of courts of equity whereby protection is given to purchasers, for valuable consideration, without notice.

The 19th section enacts, that no judgment of any of the said superior courts, nor any decree or order in any court of equity, nor any rule of a court of common law, nor any order in bankruptcy or lunacy, shall, by virtue of such act, affect any lands, tenements, or hereditaments, as to purchasers, mortgagees, or creditors, unless and until a memorandum or minute, containing the name and the usual or last known place of abode, and the title, trade, or profession of the person whose estate is intended to be affected thereby, and the court and the title of the cause or matter in which such judgment, decree, order, or rule shall have been obtained or made, and the date of such judgment, decree, order, or rule, and the account of the debt, damages, costs, or monies thereby recovered or ordered to be paid, shall be left with the senior Master of the Court of Common Pleas at Westminster, who shall forthwith enter the same particulars in a book, in alphabetical order, by the name of the person whose estate is intended to be affected by such judgment, decree, order, or rule; and such officer, shall be entitled for any such entry to the sum of five shillings; and all

persons shall be at liberty to search the same book on payment of the sum of one shilling.

The 2 & 3 Vict., c. 11, after reciting that it is desirable that further protection shall be afforded to purchasers against judgments, crown debts, and *lis pendens*, enacts, "that no judgment shall hereafter (4th June, 1839) be docketed under 4 & 5 W. & M., c. 20, but that all such dockets shall be finally closed immediately after the passing of this act, without prejudice to the operation of any judgment already docketed and entered under the said recited act, except so far as any such judgment may be affected by the provisions hereinafter contained."—§ 1.

"That no judgment already docketed and entered under the said recited act of their late Majesties King William and Queen Mary, shall, after the 1st day of August, 1841, affect any lands, tenements, or hereditaments as to purchasers, mortgagees, or others, unless and until such memorandum or minute thereof, as is prescribed in 1 & 2 Vict., c. 110, § 19, shall be left with the senior Master of the Court of Common Pleas at Westminster, who shall forthwith enter the same in manner thereby directed in regard to judgments; and such officer shall be entitled for any such entry to the sum of five shillings."—§ 2.

"That in addition to the entry by the said last-mentioned act, or by this act required to be made in a book by the senior Master of the particulars to be contained in every memorandum or minute left with him of any judgment, decree, or order, rule or order, he shall insert in such book the year and the day of the month when every such memorandum or minute is so left with him."—§ 3.

The 4th § makes judgments, though registered under 1 & 2 Vict., c. 110, or 2 & 3 Vict., c. 11, void after five years from registration, as against purchasers, mortgagees, and creditors, unless a fresh registry be made within five years before the execution of the conveyance, settlement, mortgage, lease, or other deed or instrument vesting or transferring the legal or equitable right, title, estate, or interest in or to any such purchaser or mortgagee for valuable consideration, or as to creditors, within five years before the right of such creditors accrued, and so *toties quoties*, at the expiration of every succeeding five years. The re-entry fee is one shilling.

"That as against purchasers and mortgagees, *without notice* of any such judgment, decrees, or orders, rules or orders as aforesaid, none of such judgments, decrees or orders, rules or orders, shall bind or affect any lands, tenements, or hereditaments, or any interest therein, further or otherwise or more extensively in any respect, although duly registered, than a judgment of one of the superior courts aforesaid would have bound such purchaser or mortgagee before the 1 & 2 Vict., c. 110, where it had been duly docketed according to the law then in force."—§ 5.

"That nothing in the said recited act of her present Majesty, nor in this act contained, shall extend to revive or restore any judgment which shall be extinguished or barred, nor shall the same extend to affect or prejudice any judgment as between the parties thereto, or their representatives, or those serving as volunteers under them."—§ 6.

In order to bind lands in Middlesex or Yorkshire, it is necessary to file a memorial of the judgment in the registry office of such counties respectively; before which the lands shall not be affected or bound by the judgment.

As to judgments becoming a charge on public stock and shares in companies by order of a Judge, the 14th § of 1 & 2 Vict., c. 110, enacts, "that if any person against whom any judgment shall have been entered up in any of her Majesty's superior courts at Westminster shall have any Government stock, funds, or annuities, or any stock or shares of or in any public company in England (whether incorporated or not), standing in his name in his own right, or in the name of any person in trust for him, it shall be lawful for a Judge of one of the superior courts, on the application of any judgment-creditor, to order that such stock, funds, or annuities, or shares, or such of them or such part thereof respectively as he shall think fit, shall stand charged with the payment of the amount for which judgment shall have been so recovered, and interest thereon; and such order shall entitle the judgment-creditor to all such remedies as he would have been entitled to if such charge had been made in his favour by the judgment-debtor; provided, that no proceedings shall be taken to have the benefit of such charge until after the expiration of six calendar months from the date of such order."

And "in order to prevent any person against whom judgment shall have been obtained from transferring, receiving, or disposing of any stock, funds, annuities, or shares thereby authorised to be charged for the benefit of the judgment-creditor under an order of a Judge," it is further enacted by § 15, "that every order of a Judge charging any Government stock, funds, or annuities, or any stock or shares in any public company under this act, shall be made in the first instance *ex parte* and without any notice to the judgment-debtor, and shall be an order to shew cause only; and such order, if any Government stock, funds, or annuities standing in the name of the judgment-debtor in his own right, or in the name of any person in trust for him, is to be affected by such order, shall restrain the Governor and Company of the Bank of England from permitting a transfer of such stock in the meantime and until such order shall be made absolute or discharged; and if any stock or shares of or in any public company standing in the name of the judgment-debtor in his own right or in the name of any per-

son in trust for him, is or are to be affected by any such order, shall in like manner restrain such public company from permitting a transfer thereof; and that if, after notice of such order to the person or persons to be restrained thereby, or in case of corporations, to any authorized agent of such corporation, and before the same order shall be discharged or made absolute, such corporation or person or persons shall permit any such transfer to be made, then and in such case the corporation or person or persons so permitting such transfer shall be liable to the judgment-creditor for the value or amount of the property so charged and so transferred, or such part thereof as may be sufficient to satisfy his judgment; and that no disposition of the judgment-debtor in the meantime shall be valid or effectual as against the judgment-creditor; and further, that, unless the judgment-debtor shall within a time to be mentioned in such order, show to a Judge of one of the said superior courts sufficient cause to the contrary, the said order shall, after proof of notice thereof to the judgment-debtor, his attorney or agent, be made absolute: provided that any such Judge shall, upon the application of the judgment-debtor, or any person interested, have full power to discharge or vary such order, and to award such costs upon such application as he may think fit."

A creditor who causes his debtor to be taken or charged in execution, thereby relinquishes all claim to any charge or security to which he may be entitled under these acts.—§ 16.

The 17th § enacts, that every judgment-debt shall carry interest at the rate of 4 per centum per annum from the time of entering up the judgment, or from the time of the commencement of this act, in cases of judgments then entered up, and not carrying interest, until the same shall be satisfied; and such interest may be levied under a writ of execution on such judgment.

Where there are cross judgments in the same, or different actions in the same, or different courts between parties substantially the same, the one may be set off against the other. This may be effected by applying to the court in which the opposite party has obtained judgment, for a rule to show cause why satisfaction should not be entered on the roll, on the applicant's acknowledging satisfaction for the same amount in his judgment, or *vice versa* if the applicant's judgment be less, the other party's attorney being first satisfied his lien upon the judgment for costs in that particular case. *Chit. Arch. Prac.* 330.

The following are the several species of judgments most usually occurring in practice:—

1. Judgment, on plea in *abatement*. If it be for the plaintiff on verdict, it is peremptory, *quod recuperet*, and therefore, in actions for damages, if the jury do not assess them, a *venire de novo* must be awarded.

But if it be on demurrer, or on replication of *nil tibi* record, it is not final, but merely a *respondens ouster*. Judgment for the defendant is, that the writ be quashed, unless the matter pleaded in abatement is some temporary disability, such as infancy, &c., in which case the judgment is, that the plaintiff must remain without day, until, &c. *Tidd*, 642.

2. Judgment against a *casual ejector*. See EJECTMENT.

3. Judgment on a *cognovit*. If the *cognovit* be made unconditionally, the plaintiff may, of course, sign judgment and sue out execution as soon as he pleases. If there be conditions inserted in it, judgment must be in strict pursuance thereof. See COGNOVIT.

4. Judgment by *default*. This is either by *nil dicit*, that is, where a defendant is stated to have appeared, but to have said nothing in bar or preclusion of the action, or by *non sum informatus*, where he is said to appear by attorney, but the attorney says he is not informed by the defendant of any answer to be given. Where there are several defendants, if some let judgment go by default, and others plead to issue, a special *venire* should be awarded, as in the case where a judgment by default is signed as to part of an action, and a defendant joins issues as to the *residue*, *tam ad triandum quam ad inquirendum*, and the jury who try the issues should assess the damages against all the defendants: but in actions where the plea of one defendant enures to the benefit of all, or in actions upon contract, if a plaintiff fail of obtaining a verdict against those who have pleaded, he cannot have damages assessed against the others who let judgment go by default; for the contract being entire, the plaintiff must succeed against all the defendants, or none; it would not be so in actions *ex delicto*, for a tort is several as well as joint, unless the plea of those who defend shows that there is no cause of action at all. See WRIT OF INQUIRY; INTERLOCUTORY.

5. Judgment in *demurrer*. It is either interlocutory or final, in the same manner as judgment by default. If a defendant plead several matters to the same or several counts of a declaration, and the plaintiff demur to some of the pleas, and take issue upon others; if the defendant succeed upon any of the pleas demurred to, and that plea be an answer to the whole action, the plaintiff shall not have judgment upon the issues in fact, should they be found for him; but the only judgment that shall be entered, is *nil capiat per breve*. 1 *Saund.* 80, n. (1).

6. Judgment *de melioribus damnis*. Where a jury sever the damages by mistake, the plaintiff may cure the defect by taking judgment *de melioribus damnis* against one, and enter a *nolle prosequi* as to the other; or, by entering a *remittitur* as to the lesser damages, he may have judgment for the greater damages against both. *Chit. Arch. Prac.* 323.

7. Judgment in *error*. See **ERROR**.

8. Judgment against *executors* or *administrators*. In an action against an executor or administrator, suggesting a *devastavit*, the judgment against the defendant shall be *de bonis propriis*, and so if he plead a plea which he knows to be false, and also if he be made liable and charged as assignee; but otherwise the judgment would be *de bonis testatoris*. *Chit. Arch. Prac.* 880.

9. Judgment against *heirs* or *devisees*. If an heir have aliened the lands previously to the suing out of the writ, he is expressly rendered liable for the specialty debts of his ancestor, to the amount of the lands aliened, by 11 G. IV. and 1 Wm. IV., c. 47, § 6. And an action is maintainable against a devisee, (§ 2), rendering wills in fraud of creditors void. And the 3 & 4 Wm. IV., c. 104, renders the lands liable to every kind of debt.

10. Judgment against *prisoners*. The plaintiff shall proceed to trial or final judgment against a prisoner within three terms inclusive, after declaration, and shall cause the defendant to be charged in execution within two terms inclusive, after such trial or judgment; of which the term in or after which the trial was had, shall be reckoned one. *H. T., 2 Wm. IV., reg. 1, § 85*. Otherwise the prisoner may be discharged or superseded.

11. Judgment *quando acciderint*. If, on the plea of *plenè administravit* in an action against an executor or administrator, or on the plea of *riens per descent*, in an action against an heir, the plaintiff, instead of taking issue on the plea, take judgment of assets *quando acciderint*, in this case, if assets afterwards come to the hands of the executor or heir, the plaintiff must first sue out a *scire facias*, before he can have execution. If, upon this *scire facias*, assets be found for part, the plaintiff may have judgment to recover so much immediately, and the residue of the assets *in futuro*. 1 *Sid.* 448.

12. Judgment *non obstante veredicto*. Where the defence put upon the record is not a legal defence to the action in point of substance, and the defendant obtain a verdict, the court, upon motion, will give the plaintiff leave to sign judgment notwithstanding the verdict, provided the merits of the case be very clear. But where the plea contains no confession of the cause of action, the proper course is to award a repleader, and not to give judgment *non obstante veredicto*. A defendant cannot obtain this judgment in any case: he must arrest the judgment. It must be moved for within four days from the time of trial, if there are so many days in term; it cannot in any case be moved for after the expiration of the term, provided the jury process be returnable in the same term. The judgment is interlocutory; after which a writ of enquiry must be executed, and final judgment signed, as in ordinary cases. If the defendant have succeeded on any of his pleas, he will be entitled to retain his verdict on them; and there must be

a *venire de novo*; neither party is entitled to the costs of the material issues. *Chit. Arch. Prac.* 1108.

13. Judgment of *non pros*. It is a final judgment for costs, signed by a defendant only, whenever a plaintiff, in any stage of the cause, neglects to prosecute his action, or part of it, within the times limited by the rules of the court. See **DECLARATION**.

14. Judgment as in case of a *nonsuit*. By 14 Geo. II., c. 17, § 1, where issue is joined, and the plaintiff shall neglect to bring such issue to trial, according to the course and practice of the court, then it shall be lawful for the Judges of the court, upon motion made in open court (due notice having been given thereof), to give the same judgment for the defendant as in cases of nonsuit, unless upon just and reasonable terms, they shall allow a further time for the trial of such issue, and if the plaintiff neglect to try the issue within the time so allowed, the court shall give such judgment as aforesaid. In all cases within the statute, if the plaintiff once comply with it, by taking down the issue for trial, although he be nonsuited, and the nonsuit be afterwards set aside, or although he have a verdict, and a new trial be afterwards granted, or although the parties agree to a reference, which, by the plaintiff's default, turns out abortive, the defendant can never afterwards have judgment as in case of a nonsuit, for any subsequent laches upon the part of the plaintiff in not bringing the cause to trial; but if he wish to dispose of the action, he must take it down to trial by proviso.

The plaintiff is in no case obliged to give notice of trial until the term after that in which issue is joined, and consequently in *town* causes the motion cannot be made until two terms (of which, when issue is joined in term time, that in which issue is joined is counted as one) have elapsed, after issue joined against all the defendants; thus, if issue be joined in Michaelmas Term, the motion can be made in Easter Term; or if issue be joined in Hilary, the motion may be made in Trinity Terms. But where issue is joined in vacation, the defendant cannot move until the third term after issue joined; thus, if issue be joined in Trinity vacation, the motion cannot be made until the ensuing Easter Term.

In *country* causes, if the issue be joined in an issuable term (either Hilary or Trinity), and no notice of trial given for the next assizes, the defendant cannot move for judgment as in case of a nonsuit, until after the plaintiff has failed to bring down the cause for trial at the second assizes. If it be joined in a non-issuable term (Easter or Michaelmas), though no notice of trial were given for the next assizes, the motion may be made in the term next after those assizes. If it be joined in the vacation of a non-issuable term, and no notice of trial be given for the next assizes, it seems not to be settled at what time the judgment may be moved for.

But in *Harrison v. Williams* (6 Dowl. 772), *Williams, J.*, held that it could not be made the term after the next assizes.

In causes to be tried before the *sheriff*, the time at which the plaintiff would be compelled to proceed by the court, will, it seems, be regulated by the times at which the *sheriff* sits. But the rules will be the same in principle as those above mentioned.

15. Judgment upon *nisi* record. The judgment for the plaintiff is interlocutory or final, just as it is upon demurrer or default; but the defendant's judgment would be final, a rule for judgment having been previously given.

Where a defendant shall plead a plea of judgment recovered in another court, he shall, in the margin of such plea, state the date of such judgment, and if such judgment shall be in a court of record, the number of the roll on which such proceedings are entered, if any; and in default of his so doing, the plaintiff shall be at liberty to sign judgment as for want of a plea; and in case the same be falsely stated by the defendant, the plaintiff, on producing a certificate from the proper officer, or person having the custody of the records or proceedings of the court where such judgment is alleged to have been recovered, that there is no such record or entry of a judgment as therein stated, shall be at liberty to sign judgment as for want of a plea, by leave of the court or a Judge. *H. T., 4 Wm. IV., r. 8.*

16. Judgment in *replevin*. See *REPLEVIN*.

17. Judgment in *scire facias*. The judgment is the same as in ordinary cases.

18. Judgment on *warrant of attorney*. Judgment may be entered upon a warrant of attorney, at the time therein specified for that purpose; and if the warrant were given to secure the payment of money, it is not necessary that the plaintiff should delay the signing of the judgment until default be made in the payment, unless that be expressly stipulated for in the defeazance. If the warrant specify any particular time at which the judgment is to be signed, it cannot be entered up at any other time. Within a year and a day from the date of a warrant, judgment may be entered up as of course; but leave to enter up judgment on a warrant of attorney above one and under ten years old, must be obtained by a motion in term, or by order of a Judge in vacation; and if ten years old or more, upon a rule to show cause. The application for such leave is founded upon an affidavit, stating the consideration for the warrant of attorney, its execution, the amount remaining due to the plaintiff, and alleging positively that the defendant was alive at a certain time therein mentioned. *H. T., 2 Wm. IV., r. 1, § 73.*

19. In *criminal* cases, judgment, unless any matter be offered in arrest thereof, follows upon conviction, being the pronouncing of that punishment which is expressly ordained by law. *4 Bl. Com., c. xxix.*
Judicandum est legibus non exemplis. 4 Co.

33.—(We are to judge by the laws, not by examples.)

JUDICATORES TERRARUM, persons in the county palatine of Chester, who, on a writ of error, were to consider of the judgment given there, and reform it, otherwise they forfeited 100*l.* to the Crown by custom. *Jenk. Cent. 71.*

Judices non tenentur exprimere causam sententiae suae. *Jenk. Cent. 75.*—(Judges are not bound to explain the reason of their sentence.)

JUDICIAL ACTS, numerous statutes giving summary power to justices of the peace; and that certain acts shall only be valid if done by two magistrates. If it be only a *ministerial* act, it is not requisite that the two magistrates should be together at the time of doing the act; if it be *judicial*, they must.

JUDICIAL AUTHORITY, the power of a Judge.

There is a wide distinction between a special authority to act under particular circumstances, and a judicial authority to act in particular cases. So long in either case as the party acts within the limits of his authority, he is, of course, justified in what he does, and in either case, if he plainly exceed the limits of his authority, he is without justification; the material difference is this, that in the former case, *i. e.*, where he has a mere authority to execute, it is open to enquiry whether facts existed which warranted his act; in the latter, where he acts judicially in a matter within his jurisdiction, his adjudication is usually conclusive upon the question, whether the particular facts warranted that judgment, and to protect him from an action of trespass. *3 Stark. Evid. 1140, q.*

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, a tribunal established in its present form by 2 & 3 Wm. IV., c. 92; 3 & 4 Wm. IV., c. 41; and 6 & 7 Vict., c. 38, for the disposal of appeals and such other matters as the Queen in Council may refer to them.

"It is admirably adapted," said Lord Lyndhurst, "for the business it has to perform. There are various kinds of law agitated and discussed, considered and decided before the tribunal. Questions of civil and ecclesiastical law come before it. There are Judges who have been brought up in practising and administering the civil and ecclesiastical laws; and when questions of this kind arise, their attendance is required, and they form part of the court for deciding these questions. Then there are questions of what in England is called Equity. There are Judges from the Equity Courts members of this tribunal; and when questions of that kind are discussed, their attendance is required, and they form part of the court. Again, questions of common law are considered and decided. There are members of that court who are Judges of common law; and they attend on these occasions to

assist in decision. Nay, more, there are questions of Hindoo and Mahometan law discussed before that tribunal; the result of which is of the utmost importance to the parties. The court has then the assistance of persons, who, having practised as Judges in India, are familiar with such questions." *Debates*, 12 April, 1842.

JUDICIAL DOCUMENTS, proceedings relating to litigation. They are divided into (1), judgments, decrees, and verdicts; (2), depositions, examinations, and inquisitions taken in the course of a legal process; (3), writs, warrants, pleadings, bills, and answers, &c., which are incident to judicial proceedings. 1 *Stark. Evid.* 252.

JUDICIAL WRITS, those writs which issue from the court in which proceedings are commenced under its seal, and tested in the name of its chief Judge, contradistinguished from original writs which issue out of the Court of Chancery.

Judici officium suum excedenti non paretur. Jenk. Cent. 139.—(To a Judge exceeding his office, there is no obedience.)

Judici satis pœna est quod Deum habet ultorem. 1 Leon. 295.—(It is punishment enough for a Judge, that he has God as his avenger.)

Judicia in curiâ regis non adnihilentur, sed stent in robore suo quousque per errorem aut at-tinctum annullentur. 2 Inst. 539.—(Judgments in the King's Court, are not annihilated, but remain in force until annulled by error or attain.)

Judicia in deliberationibus crebro maturescunt, in accelerato processu nunquam. 3 Inst. 210.—(Judgments become frequently matured by deliberations: never by hurried process.)

Judicia posteriora sunt in lege fortiora. 8 Co. 97.—(The latter decisions are the stronger in law.)

Judicia sunt tanquam juris dicta, et pro veritate accipiuntur. 2 Inst. 537.—(Judgments are, as it were, the dicta of the law, and are received as truth.)

Judiciis posterioribus fides est adhibenda. 13 Co. 14.—(Credit is to be given to the latest decisions.)

Judicis est judicare secundum allegata et probata. Dyer 12.—(It is the duty of a Judge to decide according to facts alleged and proved.)

Judicis officium est opus diei in die suo perficere. 2 Inst. 256.—(It is the duty of a Judge, to finish the work of each day, within that day.)

Judicis officium est ut res ita tempora rerum quærere, quæsito tempore tutus eris. Co. Lit. 171.—(It is the duty of a Judge, to inquire as well into the time of things, as into things themselves; by inquiring into the time, you will be safe.)

Judicium à non suo judice datum nullius est momenti. 10 Co. 76.—(A judgment given by an improper Judge is of no moment.)

Judicium est quasi juris dictum. Co. Lit. 168.—(Judgment is, as it were, a dictum of law.)

Judicium non debet esse illusorium; suum effectum habere debet. 2 Inst. 341.—(A judgment ought not to be illusory; it ought to have its consequence.)

Judicium redditur in invitum, in presumptione legis. Co. Lit. 248.—(Judgment, in presumption of law, is given contrary to inclination.)

Judicium semper pro veritate accipitur. 2 Inst. 390.—(Judgment is always taken for truth.)

JUDICIUM DEI [*judgment of God*], a term applied by our ancestors to the now prohibited trials of secret crimes; as those by arms and single combat; and the ordeals, or those by fire or red-hot plough-shares, by plunging the arm into boiling water, or the whole body into cold water; in hopes God would work a miracle, rather than suffer truth and innocence to perish. *Si super defendere non possit, judicio Dei, scilicet aqua vel ferro, fieret de eo justitia.* These customs were a long time kept up even among Christians; and they are still now in use among some nations. Trials of this sort were usually held in churches in presence of the bishops, priests, and secular Judges; after three days' fasting, confession, communion, and many adjurations and ceremonies, described at large by Du Cange. *Encyc. Lond.*

JUDICIUM PARIUM, the judgment of one's peers.

JUGULATOR, a cut-throat or murderer.

JUGUM TERRÆ, a yoke of land, containing half a plough-land. *Domesday.*

JUNCARE, to strew rushes. *Pat.* 14 Ed. 1.

JUNTA, or **JUNTO** [Ital.], a select council for taking cognizance of affairs of great consequence, requiring secrecy.

Jura ecclesiastica limitata sunt infra limites separatos. 3 Bulst. 53.—(Ecclesiastical laws are limited within separate bounds.)

Jura eodem modo destruuntur quo constituentur. —(Laws are abrogated by the same means by which they were made.)

Jura naturæ sunt immutabilia. —(The laws of nature are unchangeable.)

Jura publica anteferenda privatis. Co. Lit. 130.—(Public rights are to be preferred to private.)

Jura publica ex privato promiscue decidi non debent. Co. Lit. 181, b.—(Public rights ought not to be promiscuously decided out of a private transaction.)

Jura regis specialia non conceduntur per generalia verba. Jenk. Cent. 103.—(The special rights of the king are not affected by general words.)

Juramentum est indivisibile, et non est admit-tendum in parte verum et in parte falsum. 4 Inst. 279.—(An oath is indivisible; it is not to be received as partly true and partly false.)

Jura sanguinis nullo jure civili dirimi possunt. Bacon.—(The rights of blood can be taken away by no civil law.)

Jurato creditur in judicio. 3 Inst. 79.—(In judgment, credit is given to the swearer.)

Juratores debent esse vicini, sufficientes, et minus suspecti. Jenk. Cent. 141.—(Jurors ought to be neighbours, of sufficient estate, and free from suspicion.)

Jurare est Deum in testem vocare, et est actus divini cultus. 3 Inst. 165.—(To swear, is to call God to witness, and is an act of religion.)

JURAT, the memorandum of the time, place, and person before whom an affidavit is sworn. There must be neither erasure nor interlineation in it.

JURATA, the jury clause in a *Nisi Prius* record.

JURATION, the act of swearing; the administration of an oath.

JURATOR, a juror.

JURATORY CAUTION, a proceeding in Scotch law.

JURATS, officers in the nature of aldermen, sworn for the government of many corporations.

Juratores sunt judices facti. Jenk. Cent. 68.
—(Juries are the Judges of fact.)

Juri non est consonum quod aliquis accessorius in curia regis convineatur antequam aliquis de facto fuerit attinctus. 2 Inst. 183.—(It is not consonant to justice, that any accessory should be convicted in the King's Court, before any one has been attainted of the fact.)

JURE EMPHYTEUTICO (by the law of rents and services).

JURIDICAL, acting in the distribution of justice.

JURIDICAL DAYS, days in court on which the laws are administered.

JURISCONSULT, one who gives his opinion on cases of law.

JURISDICTION, legal authority; extent of power.

There are three sorts of inferior jurisdictions: 1. To *hold pleas*, which is the lowest, and a party may either sue there or in the Queen's Courts. 2. The *cognizance of pleas*, by which a right is vested in the lord of a franchise to hold pleas, and he is the only person who can take advantage of it, by claiming his franchise. 3. An *exempt jurisdiction*, as where the Crown grants to some city, that its inhabitants shall be sued within such city, and not elsewhere. 3 Salk. 79.

Jurisdictio est potestas de publico introducta cum necessitate jurisdictionis. 10 Co. 73.—(Jurisdiction is a power introduced for the public good, with the necessity of expounding the law.)

Jurisdictio istius curie (B. R.) est originalis seu ordinaria, et non delegata; designatio Justiciariorum est à regi, jurisdictionis vero ordinaria à lege. 4 Inst. 74.—(The jurisdiction of this Court (Queen's Bench) is original or ordinary, and not delegated; the nomination of the Judges is from the king, but their ordinary jurisdiction is from the law.)

Juris effectus in executione consistit. Co. Lit. 289.—(The effect of law consists in execution.)

JURISINCEPTOR, a student of the civil law.

JURISPRUDENCE, the science of law.

Jurisprudentia legis communis Angliæ est scientia socialis et copiosa. 7 Co. 28.—(The jurisprudence of the common law of England, is a social and copious science.)

JURIST, a civil lawyer; a civilian.

JURIS UTRUM, an abolished writ which lay for the parson of a church, whose predecessor had alienated the lands and tenements thereof. F. N. B. 48.

JURNEDUM, a day's travelling.

JUROR, one who serves on a jury.

JURORS' BOOK, a list of persons qualified to serve on juries.

JURY [*jurata*, Lat., *juré*, Fr.], a company of men sworn to deliver a verdict upon such evidence of facts as shall be delivered to them touching the matter in question. "In this recess of the jury," observes Hale (*Com. Law*, c. 12, § 11), "they are to consider the evidence, to weigh the credibility of the witnesses and the force and efficacy of their testimonies; wherein, as I before said, they are not precisely bound to the rules of the civil law, viz., to have two witnesses to prove every fact, unless it be in cases of treason, nor to reject one witness because he is single; or always to believe two witnesses, if the probability of the fact does not upon other circumstances reasonably encounter them; for the trial is not here simply by witnesses, but by jury; nay, it may so fall out, that a jury upon their own knowledge may know a thing to be false that a witness swore to be true, or may know a witness to be incompetent or incredible, though nothing be objected against him, and may give their verdict accordingly."

Trial by jury was, no doubt, an institution of progressive growth, and its principle may be traced to the earliest Anglo-Saxon times. One of the judicial customs of the Saxons was, that a man might be cleared of an accusation of certain crimes, if an appointed number of persons (*juratores*), came forward and swore to a *verdictum* that they believed him innocent of the allegation. It is remarkable that for accusations of any consequence among the Saxons on the continent, twelve *juratores* were the number required for an acquittal. Similar customs may be observed in the laws of the continental Angli and Frisones, though the number of *juratores* varied in certain cases; for in the laws of the Ripuarii we find that in certain cases the oaths of even seventy-two persons were necessary for an acquittal.

Dr. Pettengal, in his inquiry into the use and practice of juries among the Greeks and Romans, deduces the origin of juries from these ancient nations. He begins with determining the meaning of the word *δικασται* in the Greek, and *judices* in the Roman writers. "The common acceptance of these words (says he), and the idea generally annexed to them, is that of *presidents of courts*, or, as we call them, judges; as such they are understood by commentators, and rendered by critics." Dr. Middleton, Archbishop Potter, and other philologists, so render these terms. It is submitted that this is an erroneous signification, for the presidents of the courts in criminal trials at Athens were the nine archons, the one presiding being called *ἡγεμὼν δικαστηρίου*, or

president of the court. The archon, properly so called, had belonging to his department all pupillary and heritable causes; the βασιλεὺς, or *rex sacrorum*, the chief priest, all cases where religion was concerned; the polemarchus, or general, all military cases; and the six thesmothetæ, the other ordinary suits. Whenever, then, the ἄνδρες δικάσται, or judicial men, are addressed by the Greek nation, they are not to be understood to be the presiding magistrates, but another class of men, who were to enquire into the state of the cause before them, by witnesses and other methods of arriving at truth; after enquiry made and witnesses heard, to report their opinion and verdict to the president, who then declared it. When the Greek orators, therefore, addressed the ἄνδρες δικάσται, as we see in Demosthenes, Ctesiphon, and Lysias, we are to understand it in the same sense, as when our counsel at the bar say, *Gentlemen of the jury*.

So likewise among the Romans the *judices* never signified judges of the bench or presidents of the court, but a body or order of men, whose office in the courts of judicature was distinct from that of the prætor or *judec questionis*, which answered to our Judge of the bench, and was the same with the archon, or ἡγεμὼν δικάστηριον of the Greeks; whereas the duty of the *judices* consisted in being impanelled, challenged, and sworn to try uprightly the case before them; and, when they had agreed upon their opinion or verdict, to deliver it to the president, who was to pronounce it. This kind of judicial process was developed in the Athenian polity of Solon, and thence copied into the Roman republic.

When the Romans were settled in Britain, as a province, they carried with them their *jura* and *instituta*, their laws and customs, which was a practice essential to all colonies; hence the Britains, Germans, and Gauls learned the Roman laws and customs, and, upon the irruption of the northern nations into the southern countries of Europe, the Roman institutions remained when the power that introduced them was destroyed. Indeed Montesquieu tells us, that under the first race of kings in France, about the fifth century, the Romans that remained and the Burgundians, their new masters, lived together under the same Roman laws and police, and particularly the same forms of judicature. And, speaking of those times, he mentions the *paires* or *hommes de fief*, homagers or peers, which, in the same chapter, he calls *juges*, *judges*, or *jurymen*; so that we hence see how at that time the *hommes de fief*, or men of the fief, were called peers, and those peers were *juges* or *jurymen*. These were the same as are called in the laws of the Confessor *pers de la tenure*, the peers of the tenure, or homagers, out of whom the jury of peers were chosen to try a matter in dispute between the lord and his tenant, or any other point of controversy in the manor. So, likewise, in all other parts of Europe where

the Romans had been, the Goths succeeding them continued to make use of the same laws and institutions which they found to have been already established.

All persons between twenty-one and sixty, possessing the necessary qualification (presently stated), may be jurors, with the following exceptions: viz., aliens, unless on a jury *de medietate lingue*; persons attainted of treason, felony, or infamous crime, unless pardoned; outlaws, excommunicated persons, or women, unless on a writ *de ventre inspiciendo*.

Those exempted from serving are peers, Judges of the courts of record at Westminster, clergymen in holy orders, qualified Roman Catholic clergymen, qualified Protestant dissenting clergymen, serjeants and barristers at law actually practising, doctors and advocates of the civil law actually practising; attornies and proctors, duly admitted and actually practising; officers of the superior courts, coroners, gaolers, and keepers of houses of correction, members and licentiates of the Royal College of Physicians in London, actually practising; surgeons who are members of one of the Royal Colleges of Surgeons in London, Edinburgh, or Dublin, and actually practising; apothecaries certificated by the court of examiners of the Apothecaries' Company, and actually practising; officers of the navy and army on full pay; pilots licensed by the Trinity House of Deptford, Hull, or Newcastle; masters of ships in the buoy and light service, and pilots licensed by the lord warden of the cinque ports, or under any act of Parliament or charter in any other port; the household servants of her Majesty; officers of the customs or excise; sheriffs' officers, high constables, parish clerks, and persons in the service of the Post-office.

In Middlesex, no person shall be returned to serve on a jury at *Nisi Prius*, who has served as a juror in either of the two preceding terms or vacations, having the sheriff's certificate of having so served; and no person shall be returned to serve on a jury at the assizes, who has before served on a jury in Yorkshire within four years, in Wales, or in the county of Hereford, Cambridge, Huntingdon, or Rutland, within one year, or in any other county within two years, having the sheriff's certificate of having so served, which certificate the sheriff is bound to give to every common juror serving or attending as such, but not to grand or special jurors. 6 Geo. IV., c. 50, § 2.

Every man between the ages of twenty-one and sixty, who shall have, within the county in which he resides, in his own name or in trust for him, 10*l.* by the year, above reprises, in lands or tenements of freehold, copyhold, or customary tenure, or of ancient demesne, or in rents issuing out of such lands or tenements, as in lands, tenements, and rents taken together in fee-

simple, fee-tail, or for the life of himself or some other person; or who shall have, within the same county, 20*l.* by the year, above reprises, in lands or tenements held by lease for twenty-one years or longer, or for a term of years determinable on any life or lives, or who, being a householder, shall be rated or assessed to the poor-rate or to the inhabited house duty, in Middlesex, on a value of not less than 30*l.*, or in any other county on a value of not less than 20*l.*, or who shall occupy a house containing not less than fifteen windows, shall be qualified to serve on juries.

In London a juror must be a householder, or the occupier of a shop, warehouse, counting-house, chambers, or office, for the purpose of trade or commerce within the said city, and have lands, tenements, or personal estate of the value of 100*l.*

All those described in the jurors' book as esquires, or persons of higher degree, or as bankers or merchants, shall be qualified and liable to serve on special juries, and the sheriff or under-sheriff shall set down their names in alphabetical order, in a list to be called "the special jurors' list," and shall prefix to each name a number, which numbers shall also be written out on distinct pieces of parchment or card, and put into a drawer or box, to be kept for the purpose of nominating special juries.

If any man, summoned to attend on a jury, shall not attend in pursuance of such summons, or being thrice called, shall not answer to his name; or if any such man, or any talesman, after being called, shall be present, but not appear, or after appearance shall wilfully withdraw himself from the presence of the court, the court shall set such fine upon him as the court shall think fit, and in the case of a viewer not less than 10*l.*, unless some reasonable excuse be proved by oath or affidavit; or, upon such default, at the execution of a writ of enquiry, the under-sheriff, &c., may set a fine not exceeding 5*l.*

In civil causes a jury may be either common, or special. In criminal causes there are both the grand and petit jury. See GRAND JURY; SPECIAL JURY.

JURY-BOX, the place in court where the jury sit.

JURY-MAN, one who is impannelled on a jury.

JURY PROCESS, the writ for the summoning of a jury. They are the *distringas* or *habeas corpus juratorum*, and the *venire facias*. *Chit. Arch. Prac.* 249.

JUS, law, right, equity, authority, and rule.

A Roman magistratus generally did not investigate the facts in dispute in such matters as were brought before him; he appointed a judex for that purpose, and gave him instructions. Accordingly the whole of civil procedure was expressed by the two phrases *Jus* and *Judicium*; of which the former comprehended all that took place before the magistratus (*in jure*), and the latter all that took place before the judex (*in judi-*

cio). Originally, even the magistratus was called judex, as, for instance, the consul and prætor (*Liv. iii. 55*); and under the empire, the term judex often designated the præses. *Smith's Dict. of Antiq.*

All law (*jus*) is distributed into two parts—*Jus Gentium* and *Jus Civile*—and the whole body of law peculiar to any state, is its *Jus Civile* (*Cic. de Orat. i. 44*). The Roman law, therefore, which is peculiar to the Roman state, is its *Jus Civile*, sometimes called *Jus Civile Romanorum*, but more frequently designated by the term *Jus Civile* only, by which is meant, the *Jus Civile* of the Romans.

The *Jus Gentium* is viewed by Gaius as springing out of the *Naturalis Ratio*, common to all mankind, which is still more clearly expressed in another passage (*i. 89*), where he uses the expression "*omnium civitatum jus*," as equivalent to the *Jus Gentium*, and as founded on the *Naturalis Ratio*.

The *Naturale Jus* and the *Jus Gentium* are therefore identical. Cicero (*Off. iii. 5*) opposes *Natura* to *Leges*, where he explains *Natura* by the term *Jus Gentium*, and makes *Leges* equivalent to *Jus Civile*.

In the *Partitiones* (*c. 37*), he also divides *Jus* into *Natura* and *Lex*.

There is a threefold division of *Jus* made by Ulpian and others, which is as follows:—*Jus Civile*; *Jus Gentium*, or that which is common to all mankind; and *Jus Naturale*, which is common to man and beasts. The foundation of this division seems to have been a theory of the progress of mankind from what is commonly termed a state of nature; first to a state of society, and then to a condition of independent states. This division had, however, no practical application, and must be viewed merely as a curious theory.

The *Jus Civile* of the Romans is divided into two parts—*Jus Civile* in the narrower sense; and *Jus Pontificium*, or the law of religion. This opposition is sometimes expressed by the words *Jus* and *Fas* (*Fas et jura sinunt*. *Virg. Georg., i. 269*); and the law of things not pertaining to religion, and of things pertaining to it, are also respectively opposed to one another by the terms *Res Juris Humani et Divini* (*Instit. ii. tit. 1*).

The terms *Jus Scriptum* and *Non Scriptum*, as explained in the *Institutes* (*i. tit. 2*), comprehended the whole of the *Jus Civile*; for it was all either *Scriptum* or *Non Scriptum*, whatever other divisions there might be (*Ulp. Dig. 1, tit. 1, § 6*). *Jus Scriptum* comprehended everything, except that "*quod usus approbavit*." This division of *Jus Scriptum* and *Non Scriptum* does not appear in Gaius. It was borrowed from the Greek writers, and seems to have little or no practical application among the Romans.

There is another division of the matter of law which appears among the Roman jurists, viz., the Law of Persons, the Law of Things, which is expressed by the phrase "*jus quod ad res pertinet*;" and the Law of Actions,

"*jus quod ad actiones pertinet.*" (*Gaius*, i. 8).
Smith's Dict. of Antiq.

JUS ACCRESCENDI, the right of survivorship. See **JOINT-TENANCY**.

Jus accrescendi inter mercatores locum non habet, pro beneficio commercii. Co. Lit. 182.

—(The right of survivorship does not exist among merchants for the benefit of commerce.)

Jus accrescendi præfertur oneribus. Co. Lit. 185.—(The right of survivorship is preferred to incumbrances.)

Jus accrescendi præfertur ultimæ voluntati. Co. Lit. 185, b.—(The right of survivorship is preferred to the last will.)

JUS AD REM, an inchoate and imperfect right; such as a parson promoted to a living acquires by nomination and institution.

JUS ÆSNECIÆ, the right of primogeniture.

JUS ALBINATUS, the *droit d'aubaine*: which see.

JUS ANGLORUM, the laws and customs of the West Saxons, in the time of the Heptarchy, by which the people were for a long time governed, and which were preferred before all others.

JUS CIVILE, the interpretation of the laws of the twelve tables, and now, of the whole system of the Roman laws.

JUS CIVITATIS, the freedom of the city of Rome. It differs from *Jus Quiritum*, which extended to all the privileges of a free native of Rome. The difference is much the same as between denization and naturalization with us.

JUS COMMUNE, the common law.

JUS CORONÆ, the right of the Crown.

JUS CURIALITATIS ANGLIÆ, the courtesy of England: which see.

JUS DELIBERANDI, that right which an heir has in Scotch law, of deliberating for a certain time whether he will represent his predecessor.

Jus descendit et non terra. Co. Lit. 345.—(The right descends, and not the land.)

JUS DEVOLUTUM, the right of the church of presenting a minister to a vacant parish, in case the patron shall neglect to use that right within the time limited by law.

JUS DUPLICATUM, the right of possession as well as the right of property of a thing.

Jus est norma recti; et quicquid est contra normam recti est injuria. 3 Buls. 313.—

(Law is a rule of right; and whatever is contrary to the rule of right, is an injury.)

Jus ex injuria non oritur. 4 Bing. 639.—(A right does not arise out of a wrong.)

JUS FIDUCIARIUM, a trust.

JUS FODIENDI, a right of digging.

JUS GENTIUM, the law of nations.

JUS GLADII, the right of the sword; the executive power of the Sovereign.

JUS HABENDI ET RETINENDI, a right to have and to retain the profits, tithes, and offerings, &c., of a rectory or parsonage.

JUS HÆREDITATIS, the right of inheritance. See **DESCENT**.

JUS HONORARIUM, the body of Roman

law which was made up of edicts of the supreme magistrates, particularly the prætors.

JUS IMAGINIS, the right of using pictures and statutes amongst the Romans, and had some resemblance to the right of bearing a coat of arms amongst us.

JUS IN RE, a complete and full right.

Jus in re inherit ossibus usufructuarii.—(A right in a thing cleaves to the person of the individual enjoying it.)

Jusjurandi forma verbis differt, re convenit; hunc enim sensum habere debet, ut Deus invocetur. Grotius, l. 2, c. 13, § 10.—(The form of taking an oath differs in language, agrees in meaning; for it ought to have this sense, that the Deity be invoked.)

Jusjurandum inter alios factum nec nocere nec prodesse debet. 4 Inst. 279.—(An oath made by others ought neither to hurt nor profit.)

JUS LIBERORUM, a privilege granted to such persons in ancient Rome as had three children, by which they were exempted from all troublesome offices.

JUS MARITI, a right a husband acquires to his wife's moveable estate, by virtue of the marriage.

JUS MERUM, pure or mere right.

Jus naturale est quod apud omnes homines eandem habet potentiam. 7 Co. 12.—(Natural right is that which has the same force among all men.)

Jus nec inflecti gratia, ne frangi potentia, nec adulterari pecunia potest: quod si non modo oppressum, sed desertum aut negligentia assertatum fuerit, nihil est quod quisquam se habere certum, aut à patre accepturum, aut liberis esse relicturum, arbitretur. Cic.—(Favour ought not to be able to bend justice, power to warp it, nor money to corrupt it; for not only by oppression, but by neglect and want of proper care, justice becomes so abused, that it seems as if no man held his rights secure, neither receiving the inheritance transmitted by his ancestors, nor being able to transmit his own estate to his children.)

Jus non habenti, tute non paretur. Hob. 146.—(It is not safe to obey him who has no right.)

Jus non patitur ut idem bis solvatur.—(Law does not suffer that the same thing be twice paid.)

JUS PAPIRIANUM, the laws of Romulus, Numa, and other kings of Rome, collected by Sextus Papirius, who lived in the time of Tarquin the Proud.

JUS PASCENDI, the right of grazing.

JUS PATRONATUS, a commission granted by a bishop to some persons, usually his chancellor and others, of competent learning, to enquire who is the rightful patron of a church. 3 Step. Com. 517.

JUS POSSESSIONIS, a right of possession.

JUS POSTLIMINII, a right to a claim after re-capture. *Maritime Law*.

JUS PRÆTORIUM, the discretion of the Prætor in Roman law, as distinguished from the *leges* or standing laws. See **CIVIL LAW**.

JUS PRECARIUM, a precarious or courteous right for which the remedy was only by intreaty or request.

JUS PRESENTATIONIS, a right of presenting.

JUS PREVENTIONIS, the preferable right of jurisdiction acquired by a court in any cause to which other courts are equally competent by having exercised the first act of jurisdiction. *Scotch Law*.

Jus presentandi est incorporale. Co. Lit. 85.—(The right of presentation is incorporeal.)

Jus publicum privatorum pactis mutari non potest.—(A public right cannot be altered by the agreements of private persons.)

Jus publicum et privatum quod ex naturalibus preceptis aut gentium, aut civilibus est collectum, et quod in jure scripto. *Jus appellatur id in lege Angliæ rectum esse dicitur.* Co. Lit. 158.—(Public and private law is that which is collected from natural principles, either of nations or in states, and what is in written law. That is called jus, which by the law of England is said to be right.)

JUS RECUPERANDI, INTRANDI, &c., a right of recovering and entering land, &c.

JUS RELICTÆ, the right of a wife in her deceased husband's personalty; if there be children, she is entitled to a third of it; if there be none, to a half.

Jus respicit æquitatem. Co. Lit. 24.—(Law regards equity.)

Jus superveniens auctori accrebit successor.—(A right growing to a possessor accrues to the successor.)

JUS TERTII, the right of a third party to attach money belonging to his debtor, &c., in the hands of another person.

Jus testamentorum pertinet ordinario. 4 H. 7, 13, b.—(The right of testaments belongs to the ordinary.)

Jus triplex est; proprietatis, possessionis, et possibilitatis.—(Right is threefold; of property, of possession, and of possibility.)

JUS VENANDI ET PISCANDI, the right of hunting and fishing.

Jus vendit quod usus approbavit. Ellesm. Postn. 35.—(The law dispenses what use has approved.)

JUSTA, a certain measure of liquor, being as much as was sufficient to drink at once. *Mon. Angl. t. i. p. 149.*

JUSTICE [*justitia*, Lat.], the virtue by which we give to every man what is his due, opposed to injury or wrong. It is either *distributive*, belonging to magistrates, or *commutative*, respecting common transactions among men.

JUSTICEMENTS, all things appertaining to justice.

JUSTICES, officers deputed by the Crown to administer justice and do right by way of judgment. All the Judges of the superior courts are sometimes called justices, but the word is now chiefly employed to mean those petty magistrates who sit to administer summary justice in minor matters, and who are commonly called *justices of the peace*.

The Queen's Majesty is, by her office and dignity, the principal conservator of the

peace within all her dominions, and may give authority to any other to see the peace kept, and to punish such as break it, hence it is called the Queen's peace. Also, all the superior Judges are conservators of the peace; but justices of the peace, properly so called, are appointed by the Queen's special commission under the Great Seal, the form of which was settled by all the judges in 1590, and continues, with little alteration, to this day. This appoints them all, jointly and severally, to keep the peace in the particular county named; and any two or more of them to inquire of and determine felonies and other misdemeanours in such county committed, in which number some particular justices, or one of them, are directed to be always included, and no business done without their presence, the words of the commission running thus:—*quorum aliquem vestrum, A., B., C., D., &c., unum esse volumus*, whence the justices so named are usually called justices of the *quorum*. When any justices named in the commission intends to act under it, he sues out a writ of *dedimus potestatem* from the clerk of the Crown in Chancery, empowering certain persons therein named, to administer the usual oaths to him, i. e., an oath of office and of qualification as to estate, to which are added the oaths of allegiance, supremacy, and abjuration, which done, he is at liberty to act. These justices (some particular classes of them excepted) act gratuitously, receiving neither salary nor fees.

The 18 Geo. II., c. 20, enacts that every justice of the peace acting for a county (except such privileged persons as therein excepted) must have in possession, and for his own benefit, an estate, either legal or equitable, of freehold, copyhold, or customary tenure, in fee, for life, or such terms of years as in the act specified, of the clear yearly value of 100*l.*, or a reversion or remainder expectant upon such lease as in the act mentioned, with reserved rents of the clear yearly value of 500*l.* per annum. To prevent improper practices, the 6 & 7 Vict., c. 73, § 33, provides that no attorney or solicitor shall be capable of being a justice of the peace for any county during such time as he shall practise as an attorney or solicitor. The office subsists during the Crown's pleasure, and is determinable (1), by demise of the Crown; (2), by express writ under the Great Seal; (3), by writ of *supersedeas*; (4), by a new commission; (5), by accession of the office of sheriff, during the year of the abrievalty.

As to justices in boroughs, see 4 & 5 Wm. IV., c. 27; 5 & 6 Wm. IV., c. 76; 6 & 7 Wm. IV., c. 105; and in and near the metropolis, 10 Geo. IV., c. 44; 2 & 3 Vict., cc. 47, 71, and 94; 3 & 4 Vict., c. 84.

The power, office, and duty of a justice of the peace depend on his commission and on the several statutes which have created objects of his jurisdiction. The 5 & 6 Vict., c. 38, defines the jurisdiction of justices at quarter sessions.

One calendar month's notice of action must be given to a justice of the peace before suing him for any act done in his official character, and the action must be brought within two years, or, in case of continuing damage, then within one year after such damage shall have ceased. 5 & 6 Vict., c. 97, §§ 4 and 5.

JUSTICE-SEAT, the principal court of the forest.

JUSTICER, administrator of justice.

JUSTICESHIP, rank or office of a justice.

JUSTICIABLE, proper to be examined in courts of justice.

JUSTICIAR, an officer instituted by William the Conqueror; a lord chief justice.

JUSTICIARY, a lord chief justice.

JUSTICIARY, *High Court of*, the supreme criminal court of Scotland, composed of five of the Lords of Session, added to the Lords Justice-general and Justice-clerk; of whom the Lord Justice-general, and in his absence the Lord Justice-clerk is president. Its jurisdiction extends to the whole of Scotland. It has also the power of revising the sentences of all the Scottish inferior criminal courts, and from it there is no appeal whatever.

JUSTICIATUS, judicature; prerogative.

JUSTICES, a writ directed to the sheriff in some special cases, by virtue of which he may hold plea of debt in his county-court for a large sum; whereas, otherwise, by his ordinary power, he is limited to sums under 40s. *F. N. B.* 117; 3 *Bl. Com.* 36.

As the sheriff cannot, by this process, or the judgment to be obtained thereupon, arrest the defendant's body, but only take his goods; and as the cause may be removed at the defendant's pleasure into the superior courts, this process is not very much in use.

JUSTIFIABLE HOMICIDE, the killing of a human creature, without incurring any legal guilt. It is of various kinds:—

1. Such as is occasioned by the due execution of public justice, in putting a malefactor to death who has forfeited his life by the laws of his country.

2. It may be committed for the advancement of public justice, as in the following instances:—(a) Where an officer or his assistant, in the due execution of his office, either in a criminal or civil case, arrests or attempts to arrest a party who resists, and is consequently killed in the struggle. (b) In case of a riot or rebellious assembly, the officers endeavouring to disperse the mob are justifiable in killing them, both at common law and by the Riot Act, 1 Geo. I., c. 5. (γ) Where the prisoners in a gaol assault the gaoler or officer, and he in his defence kills any of them, it is justifiable, for the sake of preventing an escape. (δ) Where an officer or his assistant, in the due execution of his office, arrests or attempts to arrest a party for felony, or a dangerous wound given, and the party having notice thereof, flies, and is killed by such officer or assistant in pursuit. (ε) Where, upon such

offence as last described, a private person, in whose sight it has been committed, arrests or endeavours to arrest the offender, and kills him in resistance or flight, under the same circumstances as above mentioned, with regard to an officer.

3. When committed for the prevention of any forcible or atrocious crime, but not of any crime unaccompanied by force.

4. Where two persons being shipwrecked, and getting on the same plank, but finding it not able to save them both, one of them thrusts the other from it, whereby he is drowned, which is in pursuance of the great universal principle of self-preservation. 4 *Step. Com.* 97.

JUSTIFICATION, a maintaining or showing a sufficient reason in court why the defendant did what he is called to answer.

JUSTIFICATORS, a kind of compurgators, or those that by oath justified the innocence or oaths of others, as in the case of waging at law.

JUSTIFYING BAIL, proving the sufficiency of bail or sureties in point of property, &c.

JUSTINIANIST, a civilian; one who studies the civil law.

JUSTITIA, a statute law, or ordinance. Also, a jurisdiction, or the office of a Judge.

Justitia debet esse libera, quia nihil iniquius venali justitia; plena, quia justitia non debet claudicare; et celeris, quia dilatio est quædam negatio. 2 *Inst.* 56.—(Justice ought to be unbought, because nothing is more hateful than venal justice; free, for justice ought not to shut out; and quick, for delay is a certain denial.)

Justitia est duplex; viz., severè puniens et verè præveniens. 3 *Inst.* Epil.—(Justice is double; punishing with severity, preventing with lenity.)

Justitia est virtus excellens et Altissimo complacens. 4 *Inst.* 58.—(Justice is excellent virtue, and pleasing to the Most High.)

Justitia firmatur solium. 3 *Inst.* 140.—(Justice strengthens the throne.)

Justitia nemini neganda est. *Jenk. Cent.* 178.—(Justice is to be denied to none.)

Justitia non est neganda, non differenda. *Jenk. Cent.* 93.—(Justice is neither to be denied nor delayed.)

Justitia non novit patrem nec matrem, solum veritatem spectat justitia. 1 *Bulst.* 199.—(Justice knows neither father nor mother; justice regards truth alone.)

Justiciarii tanquam justi in concreto, justicarii de banco, dicti, nunquam judices de banco. *Co. Lit.* 71, b.—(Justices, from "justi in concreto," called justices of the bench, never Judges of the bench.)

JUSTITIAM FACERE, to hold a plea of anything.

JUSTITIUM, a ceasing from the prosecution of law, and exercising justice in places judicial. *Cowell.*

JUSTS, or **JOUSTS**, exercises between martial men and persons of honour with spears on horseback; differing from *tournaments*, which were military contentions, and con-

sisted of many men in troops. 24 Hen. VIII., c. 13.

Justum non est aliquem antenatum mortuum facere bastardum, qui pro totâ vitâ suâ pro legitimo habetur. 8 Co. 101.—(It is not just to make a man, who all his life has been accounted legitimate, a bastard after his death.)

JUVERNA, an ancient name of Ireland.

JUXTA FORMAM STATUTI (according to the form of the statute).

K

KABANI, a person, in the oriental states, who supplies the place of our notary public. All obligations that are valid, are drawn by him; and he is also the public weigh-master, and every thing of consequence ought to be weighed before him. *Encyc. Lond.*

KABIN, a species of marriage among the Turks and Persians, which is not considered as binding for life, but solemnized on condition that the husband allows the wife a certain sum of money in case of a separation. *Ibid.*

KAIA, a key, quay, or wharf. *Old Records.*

KAIAGE [*kaiagium*], wharfage.

KAIN, poultry payable by a tenant to his landlord. *Scotch Term.*

KALALCONNA [Indian], a duty paid by shopkeepers in Hindoostan who retail spirituous liquors; also, the place where they are sold. *Encyc. Lond.*

KALENDÆ, rural chapters, or conventions of the rural deans and parochial clergy, which were formerly held on the calends of every month; hence the name. *Paroch. Antiq.* 640.

KALENDAR [now spelled calendar], an account of time.

KALENDS. See CALENDS.

KANTREF [Brit.], the division of a county; a hundred in Wales. See CANTRED.

KARITE, the best beer in a religious house. See CARITAS.

KARLE, a churl. *Domesday.*

KARRATA FCENI (a cart-load of hay).

KAY, a quay, or key.

KAZY, a Mahometan judge or magistrate in the East Indies, appointed originally by the court at Delhi, to administer justice according to their written law; but particularly in matters relative to marriages, the sales of houses, and transgressions of the Koran. He attests or authenticates writings, which, under his seal, are admitted as the originals in proof. *Encyc. Lond.*

KEBBAR, or CULLER, the refuse of sheep drawn out of a flock. *Cooper's Thesau.*

KEELAGE, a privilege to demand money for the bottom of ships resting in a port or harbour. *Termes de la Ley.*

KEELHALE, or KEELRAKE, to punish in the seaman's way, by dragging the offender under water on one side of the ship, and up again on the other, by means of ropes from the yard-arm. *Encyc. Lond.*

KEELS, river vessels for the carriage of coals.

KEEPER OF THE FOREST, the chief warden of the forest, who has the superintendence over all the other officers, &c. *Manw.* p. 1, p. 156.

KEEPER OF THE GREAT SEAL, the Lord Chancellor. 5 *Eliz.*, c. 18.

KEEPER OF THE PRIVY SEAL, now called the Lord Privy Seal, through whose hands all charters, &c., pass, before they come to the Great Seal.

KEEPER OF THE TOUCH, the Master of the Assay in the Mint.

KEEPERS OF THE LIBERTIES OF ENGLAND. See CUSTODES LIBERTATIS, &c.

KENDAL, an ancient barony.

KERHERE, a customary cart-way; also, a commutation for customary carriage-duty. *Cowell.*

KERNELLATUS, fortified or embattled.

KERNES, idlers, vagabonds.

KEY, a quay or long wharf by the side of a harbour or river, to lade or discharge merchant-ships.

KEYAGE. See KAIAGE.

KEYUS, a guardian, warden, or keeper.

KIDDER, an engrosser of corn to enhance its price. *Ainsworth.*

KIDDLE, KIDEL, or KEDEL [*kidellus*, Lat.], a dam or open wear in a river, with a loop or narrow cut in it, accommodated for the laying of wheels or other engines to catch fish. 2 *Inst.* 38.

KIDNAPPING [*kind*, Dut., a child, and *nap*, to steal], stealing human beings.

By 9 Geo. IV., c. 31, § 21, if any person shall maliciously, either by force or fraud, lead, or take away, or decoy, or entice away, or detain, any child, under the age of ten years, with intent to deprive the parent or parents, or other person having the lawful charge of such child, of the possession of such child, or with intent to steal any article on its person; or shall, with any such intent as aforesaid, receive or harbour such child, knowing the same to have been so stolen or enticed, every such offender shall be guilty of felony, and shall be liable to be transported for seven years, or imprisoned, with or without hard labour, for any term not more than two years; and also, if a male, to be whipped, if the court shall so think fit.

KILKETH, an ancient servile payment made by tenants in husbandry. *Cowell.*

KILL, an Irish word signifying a church or cemetery, which is used as a prefix to the names of many places in Ireland. *Encyc. Lond.*

KILLAGIUM, keelage.

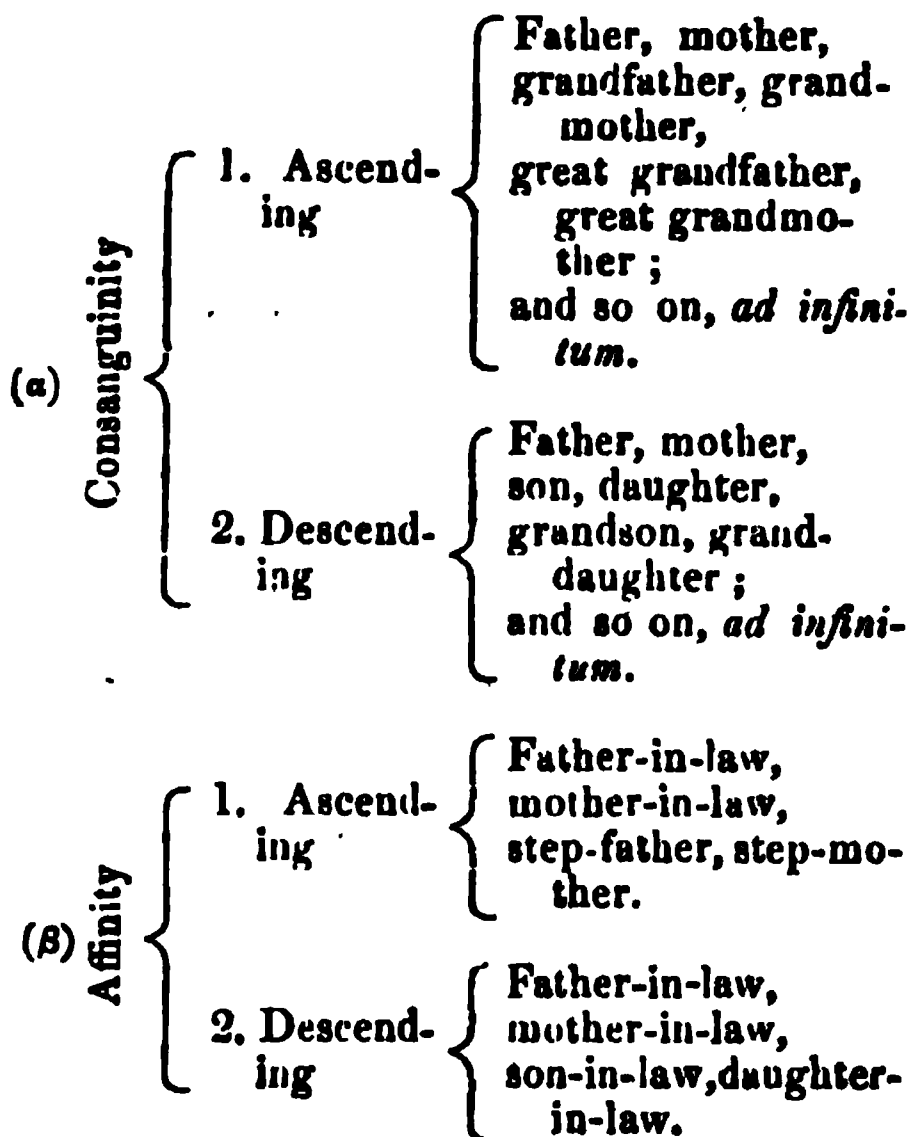
KILLYTHSTALLION, a custom by which lords of manors were bound to provide a stallion for the use of their tenants' mares. *Spelm.*

KIN, or KINDRED [*cynne*, Sax.], relation either of consanguinity or affinity.

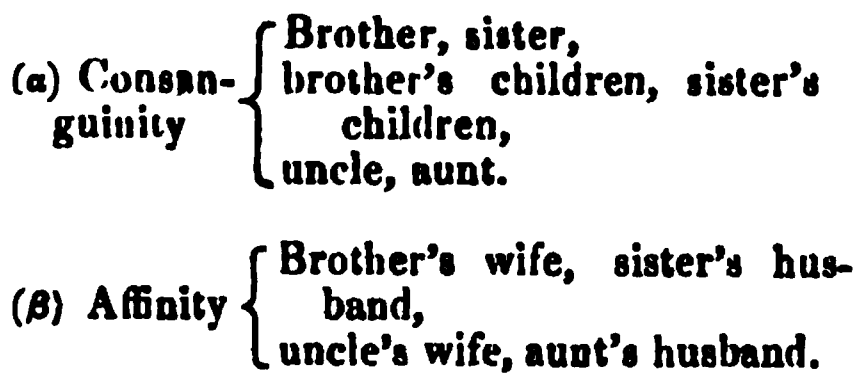
There are two degrees of either kindred; the one in the right or direct line ascending or descending, and the other in the collateral line.

The reckoning of degrees of kindred or relationship is as follows :—

I. LINEAL.



II. COLLATERAL.



The right of representation of kindred for the purposes of distribution of personalty, in the descending line, reaches beyond the great grand-children of the same parents; but in the collateral line it is not allowed to reach beyond brother's and sister's children. Our law agrees in its computation with the civil and ecclesiastical law, as to the right line, and with the civil as to collaterals, in computing who are entitled to administration and distribution of the personal property of intestates.

There are several rules to know the degrees of kindred; in the ascending line, take the son and add the father, and it is one degree ascending; then add the grandfather, and it is a second degree; a person added to a person in the line of consanguinity making a degree: if there are many persons, take away one, and you have the number of degrees, as if there be four persons, it is the third degree; if five, the fourth, &c.; so that the father, son, and grandchild, in the descending line, though three persons, make but two degrees. To know in what degree of kindred the sons of two mothers stand, begin with the grandfather, and descend to one brother, the father of one of the sons, which is one degree; then descend to his son, the ancestor's grandson, which is a second

degree; and then descend again from the grandfather to the other brother, father of the other of the sons, which is one degree, and descend to his son, &c., which is a second degree: thus reckoning the person from whom the computation is made, it appears there are two degrees, and that the sons of two brothers are distant from each other two degrees; for in what degree either of them is distant from the common stock, the person from whom the computation is made, they are distant between themselves, in the same degree; and in every line the person must be reckoned from whom the computation is made. If the kindred are not equally distant from the common stock, then in what degree, the most remote is distant; in the same degree they are distant between themselves, and so the line of the most remote makes the degree. *Wood's Inst.* 48.

KIN-BOTE, compensation for the murder of a kinsman. *Old Saxon Law*.

KINDRED, relation by birth or marriage; cognation; consanguinity; affinity. See **KIN**.

KING [a contraction of the Teutonic word *cuning*, or *cynig*, the name of sovereign dignity. In the primitive tongue it signifies stout, or valiant; the kings of most nations being, in the beginning, chosen by the people, on account of their valour and strength. *Verstegan*. Camden derives the word from the Saxon *cynig*, and that from *can*, power, or *ken*, knowledge, wherewith every monarch is supposed to be invested. The Latin, *rex*, the Scythian *rex*, the Punic *resch*, the Spanish *rey*, and the French *roi*, come all, according to Postel, from the Hebrew *rosh*, chief, or head], monarch; supreme governor.

Bacon uses the word in the feminine gender. He says: "Ferdinand and Isabella, Kings of Spain, recovered the great and rich kingdom of Granada from the Moors." See **QUEEN**.

KING-AT-ARMS, a principal officer at arms, who has the pre-eminence of the Society of Herald.

KING-CRAFT, the art of governing.

KING-GELD, a royal aid; an escuage.

KING'S ADVOCATE. See **QUEEN'S ADVOCATE**.

KING'S BENCH. See **QUEEN'S BENCH**.

KING'S BENCH PRISON, now called the Queen's Prison, 5 & 6 Vict., c. 22.

KING'S HOUSEHOLD. See **CIVIL LIST**.

KING'S SILVER, the money which was paid to the king, in the Court of Common Pleas, for a license granted to a man to levy a fine of lands, tenements, or hereditaments, to another person; and this must have been compounded according to the value of the land, in the alienation office, before the fine would pass. 2 *Inst.* 511.

KING'S STORES. See **PUBLIC STORES**.

KING'S WIDOW, a widow of the king's tenant in chief, who was obliged to take oath in Chancery that she would not marry without the king's leave.

KINGDOM, the territories subject to a monarch, either king or queen.

KINSFOLK, relations; those who are of the same family.

KINSMAN, a man of the same race or family.

KINSWOMAN, a female relation.

KINTAL. See **QUINTAL**.

KINTLEDGE, a ship's ballast.

KIORCKIOWARIANDES, churchwardens. *Swedish word.*

KIPPER-TIME, the space of time between the 3rd and 12th of May, in which fishing for salmon in the Thames, between Gravesend and Henley-on-Thames, is forbidden. *Rot. Parl.*, 50 *Edw. III.*

KIRBY'S QUEST, an ancient record remaining with the remembrancer of the Exchequer, so called from its being the inquest of John de Kirby, treasurer to King Edward I.

KIRK [*cyrce*, Sax., *κῠριαχῆ*, Gk.], a church. *Scotch Term.*

KIRK-NOTE, or **KIRK-MOTE**, a meeting of parishioners on church affairs.

KIRK-OFFICER, the beadle of a church in Scotland, consisting of the minister, elders, and deacons of a parish.

KIRK-SESSIONS, a petty ecclesiastical sessions in Scotland.

KNAVESHIP, a portion of grain, given to a mill-servant from tenants who were bound to grind their grain at such mill. See **THIRLAGE**.

KNIGHT [*ἵπποκῠρος*, Gk., *eques*, Lat., *cniht*, Sax., *chevalier* and *cavalier*, Fr., *cavagliere*, Ital., *caballiere*, Span., *kidder*, Germ. Its etymology has puzzled the most profound and learned antiquaries; its origin, however, appears to have arisen from the Greek, or some more ancient language from which the Greek itself and all other languages were derived. Chryses, in the beginning of the *Iliad*, addresses the chieftains by the appellation of *ἑκκλημίδες Ἀχαιοί*; an honourable epithet often used by Homer in both his poems. Now the word *ἑκκλημίδες* cannot be applied but to horsemen, as it means *bene-ocreati*, well-booted, the use of boots or greaves being at that time, and indeed to a very late period, exclusively confined to men who were in the habit of riding. From *κνήμη*, the leg, from which is derived the English word knee (or *vice versa* from knee, a more ancient word perhaps from which the Greeks derived their *κνήμη*), arose *κνήμις*, a boot, part of the usual accoutrement of a horseman. Therefore it is not improper to conclude that the word *knight* is derived from *κνήμις*, the boot which covered the knee and leg, *κνήμη*, and that its proper meaning is "a man wearing boots for the use of a horse." The address of the priest of Apollo might be translated, "knights of Greece."

But the Greeks had another expression for the same meaning, of which our word *knight* seems to be still a nearer representative, not as to etymology, but as to signification. *ἱπποκῠρος* and in the Doric dialect, *ἱππότα* (which the Mæonian bard introduced when the quantity of his line required it) was used also as a title of great honour for those warriors who had long experienced the fatigues

of the field, and were generally seen on horseback at the head of their respective phalanx. The veteran Nestor is often and nearly always distinguished by this epithet. And the same epithet is bestowed upon Phyleus. This title of *knight* or *horseman*, was also given in another way to other chieftains; *ἱππόδαμος* is applied to Diomedes, and several others, and means more especially a man skilled in taming and leading a horse. We have not, however, any particular data to guess whether this title was bestowed upon them by their generals or superiors, or merely acquired by their long and distinguished exploits; but it seems obvious that it was owing to one of these causes. It is clear, besides, that the word used to denote the degree of knighthood in the dialects of other nations, is also derived from that useful animal who shares with the brave the fatigues and dangers of war—the horse], a title of honour next to baronets, entitling the person on whom it is conferred to be styled *sir*, and his wife *lady*. A knight is now made by the Sovereign touching him with a sword as he kneels, and saying, "Rise, Sir——." *Encyc. Lond.*

KNIGHTENCOURT, a court held twice a year by the Bishop of Hereford.

KNIGHTENGUILD, an ancient guild or society formed by King Edgar.

KNIGHTHOOD, the character or dignity of a knight.

This institution gave rise to three others, each of which is only a deviation from itself: 1. The primitive objects of chivalry induced men to enter into intimate associations, whence sprung the several orders of knighthood. From these, by the degeneracy usually befalling all establishments, are derived the orders still subsisting in modern Europe. 2. The primitive dignity of chivalry gave birth to that species of knighthood as at present conferred. The two species here mentioned, however, are severally distinguished by historians as *regular*, and *honorary*; of these the first comprehend such as still adhere to their constitutions, as in requiring vows of celibacy, &c., and the second those which are merely titular. The Teutonic Order is an example of the former: the Order of the Garter of the latter. 3. The union of chivalry with the feudal system, and the decay of both, gave rise to knight-service, and the compulsion of landowners to honour knights. *Ibid.*

KNIGHT-MARSHAL, an officer in the royal household who has jurisdiction and cognizance of offences committed within the household and verge, and of all contracts made therein, a member of the household being one of the parties.

KNIGHT-SERVICE, the most universal and most honourable species of tenure, being entirely military, and the consequence of the feudal system. See **TENURE**.

KNIGHTS BACHELORS [*bas chevalier*], the most ancient and lowest order of knighthood. 1 *Bl. Com.* 404. See **BAS-CHEVALIERS**.

KNIGHTS BANNERET [*milites vexillarii*], those created by the sovereign in person on the field of battle. They rank, generally, after knights of the Garter. 1 *Bl. Com.* 403.

KNIGHTS OF THE BATH [*milites balnei*], an order instituted by Henry IV., and revived by George I. They are so called from the ceremony of bathing the night before their creation. *Dugd. Antiq. of Warw.* 531.

KNIGHTS OF THE CHAMBER [*milites cameræ*], those that are created in the sovereign's chamber in time of peace, and not in the field. 2 *Inst.* 666.

KNIGHTS' FEE, twelve plough lands, or 480 acres. See **TENURE**.

KNIGHTS OF THE GARTER [*equites garterii, vel periscelidis*], otherwise called *Knights of the Order of St. George*. This order was founded by Edward III., A. D. 1344. They form the highest order of knights. See **GARTER**.

KNIGHTS OF ST. PATRICK, instituted in Ireland, by George III., 1763. They have no rank in England.

KNIGHTS OF THE POST, hireling witnesses.

KNIGHTS OF THE SHIRE, members of Parliament representing counties or shires, in contradistinction to burgesses, who represent boroughs or corporations. A knight of the shire is so called, because, as the terms of the writ for election still require, it was formerly necessary that he should be a knight. This restriction was coeval with the tenure of knight-service, when every man who received a knight's fee immediately of the Crown, was constrained to be a knight; but at present any person may be chosen to fill the office who has an estate worth 600*l.* per annum. See 2 *Wm. IV.*, c. 45.

KNIGHTS OF THE THISTLE, instituted in Ireland, by King Achias, revived by James II., in 1679, and re-established by Anne in 1703. They have no rank in England.

KNOPA, a knob, nob, bosse, knot.

KNOW-MEN, or *just-fast-men*, the Lollards in England.

KSAR, a Czar. *Milton*.

KYST, KYSTA, or KYSTE [*Sax.*], a chest or coffin.

KYTH [*cognatus*], kin or kindred.

L

LAAS [*laqueus*, Lat., by Met., fraud], a net, gin, or snare.

LABEL [*labellum*], anything appendant to a larger writing, as a codicil; a narrow slip of paper or parchment affixed to a deed or writ, in order to hold the appending seal.

LABINA, watery land. *Old Records*.

LABORARIIS, an ancient writ against persons refusing to serve and do labour, and who have no means of living; or against such as, having served in the winter, refuse to serve in the summer. *Reg. Orig.* 189.

LABOR, *hard*, this punishment is said to have been introduced by 6 Anne, c. 6.

LABOURERS, servants in husbandry or manufactures, not living *intra mœnia*. These are sometimes engaged by the day or week, but are understood to be hired for a year, where no particular time is limited, and the wages are so much per annum. And with respect to these, regulation is made by various acts of Parliament, which vest in the justices of the peace the power of compelling persons not having any visible livelihood to go out to service in husbandry, or in certain specific trades, for the promotion of honest industry; and also empower the justices to determine differences arising between such labourers and their masters. 4 *Edw. IV.*, c. 1; 5 *Eliz.*, c. 5; 1 *Jac. I.*, c. 6; 20 *Geo. II.*, c. 19; 6 *Geo. III.*, c. 25; 58 *Geo. III.*, c. 51; 1 *Geo. IV.*, c. 93; 4 *Geo. IV.*, c. 34; 5 *Geo. IV.*, cc. 95, 96; 6 *Geo. IV.*, c. 129.

LACERTA, a fathom. *Old Records*.

LA CHAMBRE DES ESTEILLES, the Star Chamber. *Law French*.

LACHES [*lascher*, Fr., to loosen; or *lasche*, slothful], slackness, negligence.

It is laid down generally as a maxim, that no laches or negligence shall be imputed to an infant; but this is chiefly true of the exemption that he enjoys from the ordinary bar by lapse of time. It cannot safely be understood in a much larger sense. *Co. Litt.* 390, *b.*

The law determines that, in the Sovereign, there can be no negligence or laches. *Nul-lum tempus occurrit regi*, was formerly the standing maxim on all occasions, and no delay in resorting to his remedy was held to bar the king's right. From this doctrine it followed, not only that the civil claims of the Crown received no prejudice by the lapse of time, but that criminal prosecutions for felonies or misdemeanours (which are always brought in the Sovereign's name) might be commenced, at any distance of time, from the commission of the offence. And all this is, in general, still law; but by statute it has been in modern times largely qualified; for by 9 *Geo. III.*, c. 16, the Crown is now barred from its civil right in suits relating to landed property by the lapse of sixty years; and by 32 *Geo. III.*, c. 58, is barred in informations for usurping corporate offices or franchises by the lapse of six years; and by 7 *Wm. III.*, c. 3, an indictment for treason (except for an attempt to assassinate the King) must be found within three years after the commission of the act of treason.

LACK, LAAK, or LAUK. In East Indian computation, 100,000. The value of a lack of rupees is about 12,500*l.* sterling.

LACTA, a defect in the weight of money. *Law Latin*.

LACUNA, a ditch or dike; a furrow for a drain; a blank in a writing. *Old Records*.

LAD, purgation, exculpation. There were three kinds: 1. That wherein the accused cleared himself by his own oath, supported by the oaths of his consacramentals (compurgators) according to the number of which the *lad*

was said to be either simple or threefold. 2. Ordeal: which see. 3. Coraned: which see.

Also, a service which consisted in supplying the lord with beasts of burthen; or, as defined by Roquefort: *Service qu'un vassal devoit à son seigneur, et qui consistoit à faire faire quelques voyages par ses bêtes de somme de somme.* *Anc. Inst. Eng.*

LADA [*lathian*, Sax.], a lath or interior court of justice; also a course of water; or a broad way.

LADE, or LODE, the mouth of a river.

LADEN IN BULK, the state of being freighted with a cargo which is neither in casks, boxes, bales, nor cases, but lies loose in the hold, being defended from wet or moisture by a number of mats and a quantity of dunage. Such are usually the cargoes of corn, salt, &c.

LADING. See BILL OF LADING.

LADY [*hlæf dig*, Sax.], loaf-day, which words have in time been contracted into the present appellation. As to the original application of this expression, it may be observed, that heretofore it was the fashion of those families whom God had blessed with affluence, to live constantly at their mansions in the country, and that once a week, or oftener, the lady of the manor distributed to her poor neighbours, with her own hands, a certain quantity of bread; but the practice which gave rise to this title is now as little known as the meaning of it; however, it may be from that hospitable custom, that to this day the ladies in this kingdom serve the meat at their own tables], a woman of rank. The title properly belongs to the wives of knights, and of all degrees above them, except the wives of bishops. *Encyc. Lond.*

LADY-COURT, the court of a lady of the manor.

LADY-DAY, the 25th of March in every year, being the Annunciation of the Blessed Virgin, and one of the usual quarterly days for the payment of rent, &c.

LADYSHIP, the title of lady.

LEDORIUM, reproach.

LESÆ MAJESTATIS, CRIMEN, the crime of treason. *Glanvil*, l. 1, c. 2.

LESIONE FIDEL, *suits pro*, proceedings in the ecclesiastical courts for spiritual offences against conscience, for non-payment of debts, or breaches of civil contracts. This was a great attempt to turn the spiritual courts into tribunals for the administration of equity; but these suits were prohibited by the Constitutions of Clarendon. 10 *Hen. II.*, c. 15.

LET [*litus*, *lidus*, *letus*], one of a class between servile and free. *Palgrave* 1, 354.

LETARE JERUSALEM, Easter offerings, so called from these words in the hymn of the day. They are also denominated *quadregesimalia*.

LETHE, or LATHE, a division or district, peculiar to the county of Kent. *Spelm.*

LAFORDSWIC [*hlaford*, Sax., lord, and *swic*, betray], a betraying of one's lord or master.

LAGA, law. *Old Term.*

LAGAN [*liggan*, Sax.], goods sunk in the sea; also a right which the chief lord of the fee had to take goods cast on shore by the violence of the sea. *Bract.* l. 3, c. 2.

LAGE-DAY, a day of open court; the day of the county court.

LAGE-MAN, a juror.

LAGEN, a measure of six sextarii. *Fleta*, l. 2, c. 8.

LAGH [*laga*, Sax.], law. *Obsolete.*

LAGH-LITE, a breach of law; a punishment for breaking the law.

LAGON. See LAGAN.

LAGOTROPHY [*λαγός*, Gk., a hare, and *τρέφω*, to nourish], a warren of hares. *Encyc. Lond.*

LAGU, law; also used to express the territory or district in which a particular law was in force, as *Dena lagu*, *Mercna lagu*, &c., which may be looked upon as abbreviated forms of *the district under Danish law*, *Mercian law*, &c., without supposing, with Bishop Nicholson, that in these instances the word *lagu* does not stand for *law*, but for *regio*, *provincia*. See *Præfatio ad Wilkins & L. Anglo Sax.*, p. xvi.

LAHMAN, or LAGEMANNUS, an old word for a lawyer. *Domesday I.* 189.

LAH-SLIT, a mulct for offences committed by the Danes. *Anc. Inst. Eng.*

LALA, a roadway in a wood. *Mon. Ang. t.* 1, p. 483.

LAIC [*λαός*, Gk., people], one who is not in holy orders, or not engaged in the ministry of religion.

LAIR-WITE, a fine for adultery or fornication, anciently paid to the lords of some manors.

LAIRD, a lord of a manor in Scotland.

LAITY [*λαός*, Gk., people], the people as distinguished from the clergy.

The laity are divisible into three states:—

1. *Civil*, which includes all the nation, except the clergy, the army, and the navy. It is subdivided into—

(a) *Nobility*, as dukes, marquesses, earls, viscounts, and barons.

(β) *Commonalty*, as knights of the garter, knights banneret, baronets, knights of the bath, knights bachelors, esquires, gentlemen, yeomen, tradesmen, artificers, and labourers.

2. *Military*, consisting, by the standing constitutional law, of the militia of each county, raised from among the people, officered by the principal landowners, and commanded by the lord lieutenant. The more disciplined occasional troops of the kingdom are kept on foot only from year to year, by Parliament; and, during that period, are governed by martial law, or arbitrary articles of war, formed at the pleasure of the Crown.

3. *Maritime*, consisting of the officers and mariners of the British navy, who are governed by express and permanent laws, or the articles of the navy, established by act of Parliament. 1. *Bl. Com.* cc. xii. & xiii.

LAMMAS [said to be derived from a custom by which the tenants of the Archbishop of

York were obliged, at the time of mass, on the first of August, to bring a live lamb to the altar. In Scotland they are said to wean lambs on this day. It may be corrupted from *latter-mass*. Others derive it from a Saxon word, signifying *loaf-mass*, because on that day our forefathers made an offering of bread composed of new wheat], the first of August. *Encyc. Lond.*

LANCASTER, a county of England erected into a palatine in the reign of Edward III., and granted by him to his son John for life, that he should have *jura regalia* and a king-like power to pardon treasons, outlawries, &c., and make justices of the peace and justices of assize within the county, and all processes and indictments to be in his name. It is now vested in the Crown. See **COUNTY PALATINE**.

LANCETI, vassals who were obliged to work for their lord one day in a week, from Michaelmas to autumn, either with fork, spade, or flail, at the lord's option. *Spelm.*

LAND [*terra*, Lat., from *terrendo*, because it is ploughed], in its restrained sense means soil, but in its legal acceptation it is a generic term, comprehending every species of ground or earth, as meadows, pastures, woods, moors, *waters*, marshes, furze, and heath; it includes also messuages (i. e., dwelling-houses, with some adjacent land assigned to the use of them, usually called a curtilage), tofts (i. e., places where houses formerly stood), crofts (derived from the old English word *creaft*, meaning *handy-craft*, because such grounds are usually manured by the skilful hand of the owner; they are small enclosures for pasture, &c., adjoining to dwelling-houses), mills, castles, and other buildings, for with the conveyance of the *land*, the *structures* upon it pass also. And besides an indefinite extent *upwards*, it extends *downwards* to the globe's centre, hence the maxim:—*Cujus est solum ejus est usque ad cælum et ad inferos*. But although the term "land" includes every thing on its surface, as well as under or over it, yet it must be understood with the exception of royal mines, i. e., mines of gold and silver, which belong by prerogative to the Queen, who has the privilege of entering upon the lands of a subject, and digging and carrying away such ores; in this country, however, no mines of gold or silver have yet been discovered, so that this branch of the revenue has been hitherto valueless. A slight intermixture of gold and silver will not constitute a royal mine, it being enacted by 1 *W. & M.*, sess. 1, c. 30, § 4, and 5 & 6 *W. & M.*, c. 6, that no mine of copper, tin, iron, or lead, should be adjudged to be a royal mine, although gold and silver might be extracted from them, but that the King, or persons claiming royal mines under his authority, may have the ore (other than tin-ore in the counties of Devon and Cornwall), paying for the same a price stated in the act, which is called a right of pre-emption. This is not that prerogative of purveyance and pre-

emption by which the Crown could buy up provisions and other necessities, through the intervention of purveyors, at an appraised valuation, in preference to all others, and even without the owner's consent, as well as forcibly impressing carriages and horses to do the King's business, however inconvenient to the proprietor, upon paying him a settled price; for all these grievances were abolished by the 12 *Car. II.*, c. 24. The pre-emption mentioned in the text is for the protection of the subject, preserving, at the same time, the just rights of the revenue. The rate of purchase is provided by the 55 *Geo. III.*, c. 134. In customary or copyhold lands (the nature of which has been already explained) neither the lord of the manor, who possesses the freehold, nor his tenant, who enjoys the surface, can open new mines, without a special custom, or an express compact. In the case of *Bourne v. Taylor*, reported in 10th Volume of *East*, p. 205, the student will find discussed the leading cases on this subject.

Water, by a solecism, is, in legal language, held to be a species of land; and yet it is to be observed, that a grant of *a certain water* will not convey the soil, but only a right of fishing; but it is doubtful whether, by the grant of a *several piscary*, the soil passes or not, or, in other words, whether a person can have a *several fishery* without being owner of the soil. *Kinnersley v. Orpe*, Dougl., 56 a. And in order to recover possession of a pool or rivulet of water, the action must be brought for the land, e. g., ten acres of *land, covered with water*, and not in the name of *water* only. *Challoner v. Thomas*, Brownl. 142.

In modern statutes of any importance, a glossary clause is introduced, explaining the extent of the meaning of many technical words and phrases made use of in them, which words and phrases have very often, in their ordinary signification, a more confined, and, in many cases, a different meaning. Every considerable statute thus carries its own peculiar dictionary, the effect of which is evidently to produce doubt, confusion, and perplexity. It really becomes a very serious question whether there should not be passed a general glossarial statute, exactly defining such technical terms, by which their meaning, in every subsequent act of Parliament, should be ascertained and interpreted. However, we find in the 3 & 4 *W. IV.*, c. 74, commonly called the Fines and Recoveries Act, the word "land" thus defined:—It is to extend, so far as its enactments are concerned, or where the nature of the provision, or the context of the act, shall exclude such construction, to "manors, advowsons, rectories, messuages, lands, tenements, tithes, rents, and hereditaments, of any tenure (*except* copy of court roll), and whether corporeal or incorporeal, and any undivided share thereof. *but when* accompanied by some expression including or denoting the tenure by copy of court-roll, it shall extend to manors, mes-

sauges, lands, tenements, and hereditaments of such tenure, and any undivided share thereof." There are also definitions of the word "land" to be found in the Dower Act (3 & 4 Wm. IV., c. 105), and in the Inheritance Act (3 & 4 Wm. IV., c. 106,) where it is provided to extend to money to be laid out in the purchase of land. This last phrase requires explanation:—It is a great equity principle that money agreed or directed to be laid out in the purchase of land is considered, in the Court of Chancery, as land, because there is recognised the maxim, "Whatever is agreed to be done, is considered as actually done." The true meaning of which maxim is this:—that equity will treat the subject, as to collateral consequences and incidents, in the same manner as if the final acts contemplated by the parties, had been executed exactly as *they ought to have been done*, and not as the parties *might have executed them*. Such money, then, has all the incidents of real estates—it is no longer considered as personal estate—it descends to the *heir at law*, and not distributable among the *next of kin*; but if the purposes for which it was directed fail, this will destroy the "transubstantiated real quality," and it will result back into personalty. The Fines and Recoveries Act thus fixes the extent of the expression "money subject to be invested in the purchase of lands;" it is to include "money, whether raised or to be raised, and whether the amount thereof be or be not ascertained, and shall extend to stocks, and funds, and real and other securities, the produce of which is directed to be invested in the purchase of lands, and the lands to be purchased with such money or produce, shall extend to lands held by copy of court roll, and also to lands of any tenure in Ireland, or elsewhere out of England, where such lands, or any of them, are within the scope or meaning of the trust or power directing or authorizing the purchase."

LAND-AGENDE, LAND-HLAFORD, or LAND-RICA, a proprietor of land; lord of the soil. *Anc. Inst. Engl.*

LAND-BOC [Sax.], the deed or charter by which lands were held.

LAND-CEAP, a fine paid in some places on the alienation of lands.

LANDEA, a ditch, in marshy lands, to carry water into the sea. *Du Cange.*

LANDEFRICUS, a landlord; a lord of the soil.

LANDEGANDMAN, an inferior tenant of a manor.

LAND-GABEL, a tax or rent issuing out of land. Spelman says, it was originally a penny for every house. This *land-gabel*, or *land-gazel*, in the register of Domesday, was a quit-rent for the site of a house, or the land whereon it stood; the same with what we now call ground-rent.

LANDGRAVE [*land*, Germ., earth, and *gruff*, or *grace*, judge or count], a name formerly given to those who executed justice in behalf

of the emperors, with regard to the internal policy of the country. It is now applied, by way of eminence, to those sovereign princes of the empire who possess by inheritance certain estates called *landgravates*, and of which they receive the investiture of the emperor. *Encyc. Lond.*

LAND-HOLDER, one who holds lands.

LANDIMERS [*agrimensores*], measures of land.

LANDIRECTA, rights that charged the very lands, whoever did possess it. See *TRINODA NECESSITAS*.

LAND-JOBBER, one who buys and sells land for other men.

LAND-LORD, he of whom lands or tenements are holden; who has a right to distrain for rent in arrear, &c. *Co. Lit.* 57.

LANDLORD AND TENANT, one of the common relationships of social life, out of which arise sundry rights, duties, liabilities, and remedies. Consult *Woodf. on Landlord and Tenant*; or *Coote's Land. and Ten.*

LAND-MAN [*terricola*], a terretenant.

LAND-REEVE, a person whose business it is to overlook certain parts of a farm or estate; to attend, not only to the woods and hedge timber, but also to the state of the fences, gates, buildings, private roads, drift-ways, and water-courses; and likewise to the stocking of commons, and encroachments of every kind, as well as to prevent or detect waste and spoil in general, whether by the tenants or others; and to report the same to the manager or land-steward. *Encyc. Lond.*

LAND-REVENUES OF THE CROWN.

The greatest part of these have been from time to time granted by successive sovereigns to lords of manors and others, who now, for the most part, hold the prerogative rights of estrays, waifs, felons' goods, and, till lately, deodands (which are abolished by 9 Vict., c. 62, from and after 1 Sept. 1846), as their own absolute property. These grants having greatly impoverished the patrimony of the Crown, an act was passed in the reign of Queen Anne, whereby it was declared, that all future grants or leases by the Crown for any longer term than thirty-one years, or three lives, should be void. 1 Ann., st. 1, c. 7. amended and continued by the 34 Geo. III., c. 75. At the commencement of the reign of George III., the hereditary revenues of the Crown, arising from renewal, fines, unclaimed estrays, escheats from manors held *in capite*, and such like, being very uncertain, with all other hereditary revenues, were given up by his Majesty to the aggregate funds; and in lieu thereof his Majesty received 800,000*l.* a-year for the maintenance of his civil list. 1 Geo. III., c. 1. By subsequent acts, 34 Geo. III., c. 75, 48 Geo. III., c. 73, 52 Geo. III., c. 161, these hereditary revenues were put under the management of commissioners, styled "Commissioners of his Majesty's Woods, Forests, and Land Revenues." This arrangement was confirmed by 1 G. IV., c. 1.

LAND STEWARD, a person who overlooks or has the management of a farm or estate.

LAND-TAX, a tax laid upon land and houses, which has superseded all the former methods of rating either property or persons in respect of their property, whether by tenths or fifteenths, subsidies on land, hydages, scutages, or talliages. Although generally a charge upon a landlord, yet it is a tax neither on landlord nor tenant, but on the beneficial proprietor, as distinguished from the mere tenant at rack rent; and if a tenant have to any extent a beneficial interest, he becomes liable to the tax, *pro tanto*, and can only charge the residue on his landlord. Houses and buildings appropriated to public purposes are not liable to land-tax.

The sum fixed by 38 Geo. III., c. 5, to be paid for the land-tax in Great Britain, is 2,037,627*l.* 9*s.* 0*d.*, which is now made perpetual. To this time the land-tax acts had been annual; but by 38 Geo. III., c. 60, after reciting that it may materially conduce to strengthen public credit, that the duty now payable for one year on land should be made perpetual, subject to redemption by purchase on conditions therein set forth; it was enacted, that the several sums charged by virtue of an act, 38 Geo. III., c. 5, granting an aid for the service of the year 1798, on the respective counties, &c., in respect of the manors, messuages, &c., to be raised and paid within one year from the 25th March 1798, shall, after the expiration of the said term (allowing for certain specified exceptions), continue and be raised and paid after the 25th March in every year, for ever. And all powers and provisions contained in the said act shall be in full force and be duly executed, subject to the regulations and conditions of redemption or purchase mentioned in it. Provided always, that none of the provisions in this act contained, shall extend to any sums charged by the said act upon personal estates and perquisites of office; which sums shall, after the 25th of March, 1799, be ascertained, raised, collected, and paid, according to the directions of an act to be passed for that purpose. (39 Geo. III., c. 3.) It is also enacted, that the land-tax not purchased by proprietors shall be sold to other persons, in whose hands it is converted into a fee-farm rent, with all the remedies for rent reserved upon a lease, subject to redemption by the person in possession or having any beneficial or future interest in the lands; provided that, in such cases, all such lands whereon the land-tax so purchased shall be charged, shall, until such redemption take place, be subject to a new assessment of the land-tax from year to year by an equal rate, according to the value thereof in common with each other, without any power in such purchaser to exonerate the same from such land tax, or to fix the rate of land-tax to be charged thereon. Also, where the whole tax in any place shall not be sold, such lands as are not exonerated by this act from such

land-tax, shall continue subject to a new assessment yearly and from year to year, by an equal rate, according to the value thereof, not exceeding in any year 4*s.* in the pound on such annual value. It is also enacted, that, in case persons entering into any contract for the redemption or purchase of any land-tax, shall neglect to complete their contract, such contract shall be void, and the tax be revived, and again assessed and collected; and the persons thus making default shall forfeit not exceeding one-sixteenth part of the consideration. Where land-tax, remaining unsold, shall exceed 4*s.* in the pound on the annual value, the same shall be subject to an abatement in the manner directed by the said act. By the 42 Geo. III., c. 116, the provisions of the several acts for the redemption of the land-tax, are repealed from the 24th of June, 1802, from which date all contracts are to be entered into, and made according to that act, and the 43 Geo. III., c. 51, to render the same more effectual.

The sum assessed upon every tenant for land-tax is to be paid by the tenant, who may make a proportional deduction out of all rents to which he is liable; and disputes concerning the adjustment of this proportion are to be settled by the commissioners; but all agreements on the subject are valid between the parties, and it has now become the general practice, both in leases and grants of rent, to stipulate that no such deduction shall be made.

The following statutes for the better regulation of land tax, and its redemption, have been passed:—45 Geo. III., c. 77; 46 Geo. III., c. 133; 49 Geo. III., c. 67; 50 Geo. III., c. 58; 51 Geo. III., c. 99; 52 Geo. III., c. 80; 54 Geo. III., c. 173; 57 Geo. III., c. 100; 1 & 2 Geo. IV., c. 123; 5 Geo. IV., c. 14; 4 Geo. IV., c. 68; 7 & 8 Geo. IV., c. 75; 9 Geo. IV., c. 38; 2 & 3 Wm. IV., c. 127; 3 & 4 Wm. IV., c. 95; 3 & 4 Wm. IV., c. 121; 4 & 5 Wm. IV., c. 11; 4 & 5 Wm. IV., c. 60; 5 & 6 Wm. IV., c. 20; 6 & 7 Wm. IV., c. 80; 7 Wm. IV. & 1 Vict., c. 17; 1 & 2 Vict., cc. 57 & 58; and 5 & 6 Vict. c. 37.

LAND-TENANT, he that possesses land let, or has it in his manual occupation; in fact, a terre-tenant.

LAND-WAITER, an officer of the custom-house, whose duty is, upon landing any merchandize, to examine, taste, weigh, or measure them, &c., and to take an account thereof. In some ports they also execute the office of a coast-waiter. They are likewise occasionally styled *searchers*, and are to attend and join with the patent searcher in the execution of all cockets for the shipping of goods to be exported from foreign parts; and, in cases where drawbacks on bounties are to be paid to the merchant on the exportation of any goods, they, as well as the patent searchers, are to certify the shipping thereof on the debentures. *Encyc. Lond.*

LANDA, an open field; a field cleared from wood. *Old Records.*

LANGEMAN, a lord of a manor. 1 *Inst.* 5.
 LANGEOLUM [*lana*, Lat.], an under garment made of wool, formerly worn by the monks, which reached to their knees. *Mon. Angl.* p. 419.

LANIS DE CRESCENTIA WALLIÆ TRADUCENDIS ABSQUE CUSTUMA, &c., an ancient writ that lay to the customer of a port to permit one to pass wool without paying custom, he having paid it before in Wales. *Reg. Orig.* 279.

LANO NIGER, a sort of base coin, formerly current in this kingdom. *Mem. in Scac.*

LAPIS MARMORIUS, a marble stone about twelve feet long and three feet broad, placed at the upper end of Westminster Hall, where was likewise a marble chair erected on the middle thereof, in which our Sovereigns anciently sat at their coronation dinner, and at other times the Lord Chancellor; over this marble table are now erected the Courts of Chancery and Queen's Bench.

LAPIS PACIS. See OSCULUM PACIS.

LAPSE [*lapsus*], a species of forfeiture, whereby the right of presentation to a church accrues to the ordinary; to the metropolitan, by neglect of the ordinary; and to the Crown, by neglect of the metropolitan. This right of lapse was first established about the time, though not by the authority, of the Council of Lateran, which was in the reign of Henry II., when the bishops first began to exercise universally the right of institution to churches. Where there is no right of institution, there is no right of lapse. A donative will not lapse, unless it has been augmented by Queen Anne's bounty; neither will a Crown presentation.

The term in which the title to present by lapse accrues, is six calendar months, or 182 days. 3 *Step. Com.* 116.

LAPSED DEVISE. Unless a contrary intention shall appear by the will, such real estate or interest therein as shall be comprised or intended to be comprised in any devise in such will contained, which shall fail, or be void by reason of the devisee's death in the testator's lifetime, or by reason of such devise being contrary to law, or otherwise incapable of taking effect, shall be included in the residuary devise (if any) contained in such will. 1 *Vict.*, c. 26, § 25.

And a devise of the testator's land, or of his land in any place, or in the occupation of any person mentioned in his will, or otherwise described in a general manner, and any other general devise which would describe a customary, copyhold, or leasehold estate, if the testator had no freehold estate which could be described by it, shall be construed to include the customary, copyhold, or leasehold estate of the testator, or his customary, copyhold, or leasehold estates, or any of them to which such description shall extend, as the case may be, as well as freehold estates, unless a contrary intention shall appear by the will.—§ 26.

The following devises will not lapse:—

Where any person to whom any real

estate shall be devised for an estate tail, or an estate in *quasi* entail, shall die in the lifetime of the testator, leaving issue, who would be inheritable under such entail, and any such issue shall be living at the time of the death of the testator, such devise shall not lapse, but shall take effect as if the death of such person had happened immediately after the testator's death, unless a contrary intention shall appear by the will.—§ 32.

And where any person, being a child or other issue of the testator, to whom any real or personal estate shall be devised or bequeathed for any estate or interest not determinable at or before the death of such person, shall die in the lifetime of the testator, leaving issue, and any of such issue of such person shall be living at the time of the testator's death, such devise or bequest shall not lapse, but shall take effect as if the death of such person had happened immediately after the testator's death, unless a contrary intention shall appear by the will.—§ 33.

LAPSED LEGACY. If a legatee die before a testator, the legacy is generally a lost or lapsed legacy, and sinks into the *residuum*, but by the 33d § of 1 *Vict.*, c. 26, an exception to this rule is now introduced in the case where the bequest is to a child or other issue of the testator, for an estate not determinable at or before the death of the legatee, and the legatee leaves issue, which survives the testator. If a contingent legacy be left to any one, as when he attain, or if he attain the age of twenty-one, and he dies before that time, it is a lapsed legacy, even though he survive the testator.

LARCENY [*larcin*, Fr., from *latrocinium*, Lat.], contracted for latrocinny, the unlawful taking and carrying away of things personal, with intent to deprive the rightful owner of the same; and it is either simple, or accompanied with circumstances of aggravation.

1. Simple larceny, at common law, or plain theft. There must be an unlawful taking, which implies that the goods must pass from the possession of the right owner, and without his consent; where there is, then, no change of possession, or a change of it by consent, or a change from the possession of a person without title, to that of the right owner, there cannot be a larceny. If a delivery be obtained from the owner by a person having *animus furandi* at the time, and who afterwards unlawfully appropriates the goods in pursuance of that intent, it is larceny. By 7 & 8 *Geo. IV.*, c. 29, whoever shall steal a chattel or fixture let to be used by him in any house or lodging, shall incur the penalties of simple larceny. There must not only be a taking, but a carrying away (*cepit et asportavit*). A bare removal from the place in which he found the goods, though the thief does not quite make off with them, is a sufficient asportation or carrying away. It must be of personal goods,

and not of the realty or things adhering thereto, or savouring thereof. The taking and carrying away must be with intent to deprive the right owner, or, as it is expressed, *animo furandi*. Larceny may be committed of a thing, the owner of which is unknown. By 7 & 8 Geo. IV., c. 29, §§ 3 & 4, it was provided that every person convicted of simple larceny of any amount (all distinctions between grand and petit larceny being by the same statute abolished), shall be liable to be transported for seven years, or imprisoned for not more than two years, such imprisonment to be with hard labour and solitary confinement; and (if the offender be a male) to be accompanied with whipping at the discretion of the court. By § 16, amended as to punishment by 7 Wm. IV. and 1 Vict., c. 90, if any person shall steal to the value of 10s., any goods, or articles of silk, woollen, linen, or cotton, or of any one or more of those materials mixed with each other, or mixed with any other material, whilst laid, placed, or exposed during any stage, process, or progress of manufacture, in any building, field, or other place, he shall be transported for a term not exceeding fifteen years, nor less than ten years, or imprisoned for a term not exceeding three years, with hard labour and solitary confinement, if the court think fit, during such imprisonment.

2. Larceny from a dwelling-house, shop, warehouse, or counting-house. By the 7 & 8 Geo. IV., c. 29, amended as to punishment by 7 Wm. IV. and 1 Vict., c. 90, if any person shall break and enter any dwelling-house, and steal therein any chattel, money, or valuable security, to any value whatsoever; or shall break and enter any building, and steal therein any chattel, money, or valuable security, such building being within the curtilage of a dwelling-house, and occupied therewith, but not being part thereof, according to the provisions of the first mentioned act; or shall break or enter any shop, warehouse, or counting-house, and steal therein any chattel, money, or valuable security, the offender, in any of such cases, shall be transported for a term not exceeding fifteen years nor less than ten, or be imprisoned for a term not exceeding three years; to which imprisonment, hard labour, and solitary confinement may be superadded, if the court think fit.

3. Larceny from a church or chapel, sometimes called sacrilege. The punishment is transportation for life, or not less than seven years, or imprisonment for not more than three years, with or without hard labour. 6 & 7 Wm. IV., c. 4.

4. Larceny from the person. It is either,

(a) Private stealing, as picking a person's pockets.

(b) Open and violent larceny from the person, or robbery, called by the civilians rapine, which is the unlawful and forcible taking of goods or money from the person of another by violence, or putting him in fear

The 7 Wm. IV. and 1 Vict., c. 87, enacts, that whosoever shall rob any person, and at the time, or immediately before, or immediately after such robbery, shall stab, cut, or wound any person, shall suffer death; and that whoever being armed by any offensive weapon or instrument shall rob, or assault with intent to rob, any person, or shall, together with one or more persons, rob, or assault with intent to rob, any person, or shall rob any person, and at the time of, or immediately before, or immediately after such robbery, shall beat, strike, or use any other personal violence to any person, shall be guilty of felony, and be transported for life, or not less than fifteen years, or imprisoned for not more than three years: that whoever shall accuse, or threaten to accuse, of such abominable crime as in the act specified, or of any attempt or solicitation thereto, and extort property by such intimidation, shall incur the like penalty; that whoever shall rob any person, or steal any property from the person of another, shall be transported for a term not exceeding fifteen years, nor less than ten years, or be imprisoned for not more than three: that whoever shall assault any person, with intent to rob, shall be guilty of felony, and be imprisoned for not more than three years; and that whoever, with menaces or force, shall demand any property of any person, with intent to steal the same, shall incur the like penalty.

5. Larceny by clerks, servants, or agents. By 7 & 8 Geo. IV., c. 29, § 46, it is provided that if any clerk or servant shall steal any chattel, money, or valuable security belonging to, or in the possession or power of his master, he shall be transported for a term not exceeding fourteen years, nor less than seven; or imprisoned (with or without hard labour or solitary confinement) for a term not exceeding three years; and if a male, once, twice, or thrice whipped, if the court think fit, in addition to the imprisonment. Embezzlement is distinguished from this offence as being committed in respect of property which is not, at the time, in the actual or legal possession of the owner.

6. Larceny in relation to the post-office. By 7 Wm. IV. & 1 Vict., c. 36, § 25, every person employed under the post-office, who shall, contrary to his duty, open or procure, or suffer to be opened, or wilfully detain, or delay, or procure, or suffer to be detained or delayed, a post letter, shall be guilty of a misdemeanour, and punished by fine or imprisonment, or both, as to the court shall seem meet. By § 26, every person so employed, who shall steal or for any purpose embezzle, secrete, or destroy a post letter, shall be guilty of felony, punishable with transportation for seven years, or imprisonment not exceeding three years; and if the letter contain any chattel, money, or valuable security, then with transportation for life. By § 32, every person so employed, who shall steal, or for any purpose embezzle, secrete, or destroy, or wilfully detain or delay

in the course of conveyance or delivery by post, any printed votes or proceedings in Parliament, or any printed newspaper, or other printed paper sent by the post without covers, or in covers open at the sides, shall be guilty of a misdemeanour punishable by fine or imprisonment, or both, as to the court shall seem meet. These provisions relate only to offences by persons employed in the department of the post-office; but by §§ 27 & 28, every person who shall steal out of a post letter, any chattel, or money, or valuable security, or shall steal a post letter-bag, or a post letter from a post letter-bag, or from a post-office or officer of the post, or a mail, or shall stop a mail with intent to rob or search the same, shall be guilty of felony, and transported for life. By § 29, every person who shall steal or unlawfully take away a post letter-bag sent by a post office packet, or a letter out of any such bag, or shall unlawfully open any such bag, shall be guilty of felony, and transported for a term not exceeding fourteen years. By § 30, every receiver of a post letter, post letter-bag, chattel, money, or valuable security, feloniously stolen under the post-office acts, knowing the same to have been so stolen, shall be guilty of felony, and transported for life. By § 31, every person who shall fraudulently retain or wilfully secrete, or keep, or detain, or being required by an officer of the post-office, neglect or refuse to deliver up a post letter, which ought to have been delivered to any other person, or a post letter-bag or post letter which shall have been sent and lost, shall be guilty of a misdemeanour, punishable with fine and imprisonment. And by §§ 41 & 42, it is provided generally, that every person convicted of an offence for which transportation for life is awarded by that act, shall be liable to be transported either for life, or any time not less than seven years, or imprisoned for any term not exceeding four years; and that every person convicted of any offence punishable according to the post-office acts, by transportation for fourteen years, shall be liable to be transported for any time not exceeding fourteen years or less than seven years, or imprisoned for any time not exceeding three years; and that in all cases of imprisonment, the court may superadd hard labour and solitary imprisonment.

7. Larceny from ships, docks, wharfs, or quays. Any person stealing any goods or merchandize in any vessel, barge, or boat, in any port of entry or discharge, or upon any navigable river or canal, or in any creek belonging to, or communicating with any such port, river, or canal; or stealing any goods or merchandize from any dock, wharf, or quay, adjacent to any such port, river, canal, or creek, shall be transported for not more than fifteen years or less than ten years, or imprisoned for not more than three years, with hard labour, if the court think fit, and solitary confinement. 7 Wm. IV. & 1 Vict., c. 90.

LARDARIUS REGIS, the King's larderer or clerk of the kitchen. *Cowell*.

LARDING MONEY [*lardarium*]. In the manor of Bradford, in Wilts, the tenants pay to their lord a small yearly rent by this name, which is said to be for liberty to feed their hogs with the masts of the lord's woods, the fat of a hog being called lard; or it may be a commutation for some customary service of carrying salt or meat to the lord's larder. *Mon. Ang.*, t. 1, p. 321.

LARONS, thieves.

LASCAR, a native Indian sailor.

LASHITE, or **LASHLITE**, a kind of forfeiture during the government of the Danes in England. *Encyc. Lond.*

LAST [*hlæstan*, Sax., *lest*, Fr.], a burden; a particular weight or measure of fish, corn, wool, leather, pitch, &c.

LASTAGE [*lastagium*, Lat.], a custom exacted in some fairs and markets to carry things bought whither one will, by the interpretation of Rastal. But it is more accurately taken for the ballast or lading of a ship. It is also defined to be that custom which is paid for wares sold by the last, as herrings, pitch, &c.

LASTATINUS, an assassin or murderer.

LAST-COURT, a court held by the twenty-four jurats in the marshes of Kent, and summoned by the bailiffs, wherein orders are made to lay and levy taxes, impose penalties, &c., for the preservation of the said marshes. *Encyc. Lond.*

LAST-HEIR, he to whom lands come by escheat for want of lawful heirs; that is, in some cases the lord of whom the lands were held, but in others the sovereign. *Bract.*, l. 7, c. 17.

LATENT [*latens*, Lat.], hidden; concealed; secret.

LATENT AMBIGUITY. See **AMBIGUITY**.

LATERA, sidesmen, companions, assistants.

LATERARE, to lie sideways, in opposition to lying endways, used in descriptions of lands.

LATH, or **LATHE**, a part of a county. In some counties there is an intermediate division between the shire and the hundred, as lathes in Kent, and rapes in Sussex; each of them containing three or four hundreds apiece. In Ireland the arrangement was different. If all that tything failed, then all that lath was charged for that tything; and if the lath failed, then all that hundred was demanded for them; and if the hundred, then the shire, who would not rest until they found that undutiful fellow, who was not amenable to law. *Spencer's Ireland*.

LATHREVE, **LEDGREVE**, or **TRITHINGREVE**, an officer under the Saxon government, who had authority over that division called a lathe.

LATIMER [*latinier*, Fr., q. d., *latiner*], an interpreter, according to Coke, 2 Inst. 575. It is suggested that it should be *latiner*, because he who understood Latin might be a good interpreter. Camden makes it signify a Frenchman or interpreter. *Britan.*, f. 598.

LATIN, the language of the ancient Romans. There are three sorts of law Latin:—1. Good Latin, allowed by grammarians and lawyers. 2. False or incongruous Latin, which in times past would abate original writs; though not make void any judicial writ, declaration, or plea, &c. 3. Words of art, known only to the sages of the law, and not to grammarians; called lawyers' Latin. 1 *Lit. Abr.* 146. But proceedings are now written in English. 4 *Geo. II.*, c. 26.

LATINARIUS, an interpreter of Latin.

LATITAT [he lies hid], a writ, whereby all persons were originally called to answer in personal actions in the Queen's Bench; having its name upon a supposition that the defendant lurks and lies hid, and cannot be found in the county of Middlesex to be taken by bill, but is gone into some other county, to the sheriff of which this writ was directed, to apprehend him there. *F. N. B.* 78. Abolished by the 2 *Wm. IV.*, c. 39.

LATOR [*latus*, Lat.], a bearer, a messenger. *Cole.*

LATRO, he who has the sole jurisdiction over felonies in a particular place. See **INFANGTHRAF.**

LATROCINATION [*latro*, Lat., a robber], the act of robbing; a depredation.

LATROCINIUM, the prerogative of adjudging and executing thieves; also, larceny, theft. *Old Charter.*

LATROCINY, larceny.

LATTER-MATH, a second mowing.

LAVATORIUM, a laundry or place to wash in. Applied to such a place in the porch or entrance of cathedral churches, where the priest and other officiating ministers were obliged to wash their hands before they proceeded to Divine service.

LAVINA. See **LABINA**.

LAUDARE, to advise or persuade; to arbitrate.

Laudaturque domus, longos qui prospicit agros. 9 *Co.* 58, b.—(The house is praised which looks over long fields.)

LAUDATIO, testimony delivered in court concerning an accused person's good behaviour and integrity of life. It resembled the practice which prevails in our trials, of calling persons to speak to a prisoner's character. The least number of the *laudatores* among the Romans was ten.

LAUDATOR, an arbitrator.

LAUDIMIUM, the fiftieth part of the value of an estate paid by a new proprietor to the tenant for investiture or leave of possession. *Civil Law Term.*

LAUDUM, an arbitrament or award.

LAUNCEGAY, a kind of offensive weapon, now disused, and prohibited by 7 *Ric. II.*, c. 13.

LAUND, or **LAWND**, an open field without wood.

LAUREAT, or **LAUREATE** [*laurus*, Lat.], an officer of the household of the Sovereign, whose business consists only in composing an ode annually, on the Sovereign's birthday, and on the new year; sometimes also,

though rarely, on occasion of any remarkable victory. *Warton's Hist. of English Poetry.*

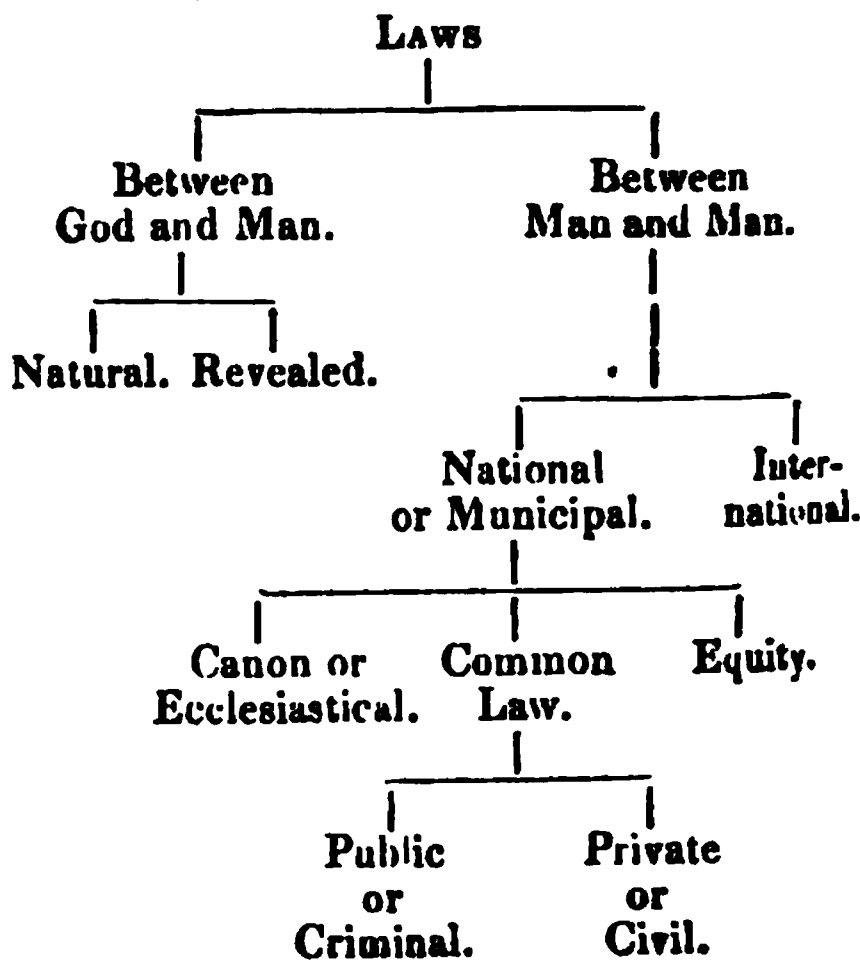
LAUREATION, a term in the Scottish universities, used for the act of taking up the degree of a master of arts, to which the students are admitted after four years' study. Dr. Johnson adds, that upon these occasions a flowery crown is used, in imitation of laurel among the ancients.

LAURELS, pieces of gold, coined in 1619, with the king's head laureated; hence the name.

LAW [*lage*, *lagea*, or *lah*, Sax., *lawe*, Belg., *loi*, Fr., *legge*, Ital., *leg*, Span. and Port., *lough*, Erse, *lex*, from *ligo*, Lat., to bind], a rule of action.

The design and object of laws is to ascertain what is just, honourable, and expedient; and, when that is discovered, it is proclaimed as a general ordinance, equal and impartial to all. This is the origin of law, which, for various reasons, all are under an obligation to obey; but, especially, because all law is the invention and gift of Heaven, the sentiment of wise men, the correction of every offence, and the general compact of the state; to live in conformity with which is the duty of every individual in society. *Demos. Orat.* 1 *contr. Aristogit.*

The several departments or branches of law may be thus shown:



Consult *Hooker's Eccle. Polity*; *Tooke's Div. of Pur.*, vol. ii., c. 2; *Bl. Com.*, vol. i., § 2, "On the Nature of Laws in general;" and *Cic. de Legibus*.

LAW OF ARMS [*lex armorum*], the ordinance regulating proclamations of war, leagues and treaties, &c.

LAWDAY, a court-leet, or view of frankpledge.

LAWING OF DOGS, expeditation.

LAWLESS COURT [*quia dicta sine lege*], a tribunal held on King's Hill, at Rochford, in Essex, on Wednesday morning next after Michaelmas Day, yearly, at cock-crowing, at which court they whisper, and have no

candle, nor any pen or ink, but a coal; and he that owes suit or service there, and appears not, forfeits double his rent. *Cam. Brit.*

LAWLESS MAN [*exlex*], an outlaw.

LAW OF MARQUE, where they that are driven to it, take the shipping and goods of that people of whom they have received wrong, and cannot get ordinary justice, when they can take them within their own bounds and precincts. *27 Edw. III., st. 2, c. 17.*

LAW MARTIAL, the military law.

LAW MERCHANT [*lex mercatoria*], a special law, differing from the common law, but part of the law of the realm, proper to merchants. See **COMMERCE**.

LAW OF THE STAPLE, the law merchant.

LAWS OF OLERON, a maritime code drawn up by Richard I., at the isle of Oleron, whence their name. They are constantly quoted in proceedings before the Admiralty Courts, as are also the Rhodian Laws. *Co. Lit. 11.*

LAW SPIRITUAL [*lex spiritualis*], the ecclesiastical law, or law christian. *Co. Lit. 344.*

LAW SUIT, an action or litigation.

LAWYER, a person learned in the law, as an advocate, counsel, or attorney.

LAY [*laikos*, Gk.], not clerical; regarding or belonging to the people, as distinct from the clergy.

LAY CORPORATIONS, bodies politic; they are either, 1, Civil, erected for many temporal purposes, or, 2, Eleemosynary, for charitable matters.

LAY DAYS, running or consecutive days; a term used as to the time of loading and unloading ships, &c.

LAY IMPROPRIATORS, laymen who appropriate church revenues to their use.

LAY INVESTITURE OF BISHOPS, putting a bishop into possession of the temporalities belonging to his bishopric.

LAY-FEE, lands held in fee of a lay lord, as distinguished from those lands which belong to the church.

LAYE [*ley*, old Fr.], law.

LAYMAN, one of the people, and not one of the clergy.

LAYSTALL [*Sax.*], a place for dung or soil.

LAZARETS, places where quarantine is to be performed by persons coming from infected countries; to escape from them is felony. *1 Jac. 1, c. 31; 26 Geo. II., c. 6; 29 Geo. II., c. 8; 6 Geo. IV., c. 75, § 21.*

LAZZI, persons of a servile condition. *Saxon Term.*

LEADING QUESTION, a question which suggests to a witness the answer which he is to make.

It is not a very easy thing to lay down any precise general rule as to leading questions: on the one hand it is clear that the mind of the witness must be brought into contact with the subject of inquiry; on the other, that he ought not to be prompted to give a particular answer, or to be asked any question, to which *yes* or *no*, would be conclu-

sive. But how far it may be necessary to particularize, in framing the question, must depend upon the circumstances of each particular case.

Objections can be taken to leading questions, but ought not to be wantonly or capriciously made, since it is, to some extent, always necessary to lead the mind of the witness to the subject of inquiry. The court has discretion to regulate the mode in which a witness in chief shall be examined, in order best to answer the purposes of justices. There is no fixed rule which binds counsel to a particular mode of examining him; if a witness by his conduct show himself decidedly adverse, it is in the discretion of the court to allow cross-examination. The situation of the witness, and the inducements under which he may labour to give an unfair account, are material considerations in this respect.

Leading questions are allowed on cross-examination. *1 Stark. Evid. 169.*

LEAGUE [*ligue*, Fr., *ligo*, Lat.], a treaty of alliance between different states or parties. It may be offensive or defensive, or both. It is *offensive* when the contracting parties agree to unite in attacking a common enemy; *defensive* when the parties agree to act in concert in defending each other against an enemy. Also a measure equal to three English miles, or 300 geometrical paces.

LEAKAGE, an allowance made to merchants for the leaking of casks or the waste of liquors.

LEAP-YEAR. See **BISSEXTILE**.

LEASE [*locatio*, Lat., *laisser*, Fr.], a contract between parties, by which the one conveys lands or tenements to the other for life, for years, or at will, but always for a less term than the party himself conveying has in the premises: for if it be for the whole interest, it is more properly an assignment. It is usually made in consideration of rent, or some other annual recompence rendered to the party conveying the premises, who is called the lessor or landlord, by the party to whom they are conveyed or let, who is called the lessee or tenant.

“Regularly, these things must concur in the making of every good lease:—1. There must be a lessor, who is able to make the lease. 2. There must be a lessee, who is capable of taking the thing demised. 3. There must be a thing demised, which is demisable. 4. If the thing demised be not grantable without a deed, or the party demising be not able to grant without a deed, the lease must be made by deed; and if so, then there must be a sufficient description of the person of the lessor, the lessee, and the thing demised; and all necessary circumstances, as sealing, delivery, &c., must be observed. 5. If it be a lease for years, it must have a certain commencement, at least when it takes effect in interest or possession, and a certain determination, either by an express enumeration of years, or by reference to a certainty that is expressed, or by re-

during it to a certainty upon some contingent event, which must happen before the death of the lessor or lessee. 6. There must be all needful ceremonies, as livery of seisin, attornment, and the like, in all cases where they are requisite. 7. There must be an acceptance of the thing demised, and of the estate by the lessee." *Shep. Touch.* 267.

All leases required by the Statute of Frauds, or any other law, to be in writing, must be by deed. 8 & 9 Vict., c. 106, § 3. But all leases not exceeding the term of three years from the making thereof, whereupon the rent reserved to the landlord during such term, shall amount unto two-third parts, at the least, of the full improved value of the thing demised, may be by parol or verbal contract. 29 Car. II., c. 3, § 2.

The usual words by which a lease is made are "demise, grant, and to farm let;" but whatsoever words amount to a grant, are sufficient to make a lease; and it may be laid down as a rule—that whatever words are sufficient to explain the intent of the parties, that the one shall divest himself of the possession, and the other come into it, for any determinate time, whether they run in the form of a license, covenant, or agreement—are of themselves sufficient, and will, in construction of law, amount to a lease for years as effectually as if the most proper and pertinent words had been made use of for that purpose: for a lease for years being no other than a contract for the possession and profits of the land on one side, and a recompence of rent or other income on the other,—if the words made use of are sufficient to prove such a contract, in whatsoever form they are introduced, or howsoever variously applicable,—the law calls in the intent of the parties, and models and governs the words accordingly.

A lease by deed usually consists of the following parts:—1. The premises, containing a statement of the date, the particulars, recitals (if any), and agreement. 2. The habendum, or that part which fixes the duration of the term. 3. The reddendum, or reservation of rent. 4. The covenants: and any exception, proviso, or condition there may be to the contract.

As to the provisions which have been made in relation to particular leases, they may be thus noticed:—

1. *Crown Leases.* The 1 Anne, st. 1, c. 7, § 5, enacts that all grants, leases, and assurances of the hereditaments therein mentioned, made by the Crown, shall be void, unless they be made for some estate not exceeding thirty-one years, or three lives, or some term of years determinable on one, two, or three lives, to commence from the making; or if such grant, lease, or assurance shall be made to take effect in reversion or expectancy, that then the same, together with the estates in possession, shall not exceed the term of thirty-one years, or three lives in the whole. Such leases are to be made without impeachment of waste, and

with the reservation of the ancient or usual rent, or more to the Queen, her heirs and successors, or such rent as has been reserved and paid for the hereditaments demised for the greater part of twenty-one years before the making of such leases; and when no rent shall have been previously reserved, then there shall be reserved a reasonable rent, not under the third part of the clear yearly value of the demised premises. This act does not extend to advowsons and vicarages. And Crown leases of lands belonging to the Duchy of Cornwall are regulated by 1 & 2 Wm. IV., c. 5.

2. *Leases under Powers.* When powers to lease are given, it is usually required that the best rent shall be reserved which can be obtained; that the leases shall be in possession and not in reversion, unless the power so express; that all the usual and proper covenants shall be inserted in the leases, and that there shall be a proviso for re-entry, in case of forfeiture for any breach of the covenants.

3. *Leases by ecclesiastical persons,* made in pursuance of 1 Eliz., c. 19; 13 Eliz., c. 10; or 32 Hen. VIII., c. 28, must be made by indenture, whether of lands of which they are seised in right of their churches, or of tithes; unless, indeed, in the latter case the instrument be merely an agreement with the party who ought to pay the tithes, to retain them. Renewed leases are under 6 & 7 Wm. IV., cc. 20 & 64. Leases of incumbents binding their successors, are provided for by 5 & 6 Vict., c. 27; and the 5 & 6 Vict., c. 108, empowers ecclesiastical corporations to grant leases for long terms of years.

4. *Leases by tenants in tail,* in pursuance of the enabling statute 32 Hen. VIII., c. 28, so as to bind the issue in tail, but not the remainder-man or reversioner, must be by indenture and *in præsentî*, not concurrent with an existing lease, and not exceed three lives, or twenty-one years, and of lands usually let, with a reservation of the usual rent, and must not be without impeachment of waste.

5. *Leases made by husbands in right of their wives* must be made in pursuance of the 32 Hen. VIII., c. 28.

6. *Leases by agents.* It was formerly laid down, that if a person have authority, by virtue of a power of attorney, to grant leases for years generally by indenture, they ought to be made in the name and style of the principal, and not in such attorney's name: for the power of attorney gives him no interest or estate in the lands, but only an authority to supply the absence of his principal by standing in his stead, which he can no otherwise do than by using his name, and making them just in the same manner and style as he would have done if he had been present. But now, although it is still considered that the execution of an indenture by an attorney must be in the name of the principal, in order to be binding upon the latter, and that the power of attorney must be under seal, as well as the deed itself, is

matters not in what form of words such execution is denoted by the signature of the name.

7. *Reversionary leases.* Where there is a prior lease or estate in being, leases cannot be made by parol; for besides that, by the Statute of Frauds, no parol lease for above three years is to have any other effect except as a lease at will; a deed is of the very essence of the grant of a reversionary interest, and without it no reversion can pass out of the grantor.

8. *Concurrent leases.* If a lease be made for life or years, to one, and afterwards the lessor make a lease for years, to another, the second lease is a concurrent lease, and good at least for so many years as shall be to come after the first lease is determined, according to the agreement: thus, if the first lease be for twenty years, and the second lease be for thirty years, and both begin at one time, the second lease is good for the last ten years.

Woodf. Land. and Ten. 52.

LEASE AND RELEASE, a mode of conveyance which derives its effect from the Statute of Uses, and operates by transmutation of possession, compounded of a lease for a year, at common law, or, a bargain and sale for a year under the Statute of Uses, and a common law release. This compound conveyance originated thus. The Statute of Enrolments (27 Hen. VIII., c. 16) seemed to be confined to cases where an estate of inheritance or freehold, or the use thereof, was to be made or take effect by reason only of a bargain and sale; it was therefore concluded that if a bargain and sale were first made for an estate less than freehold, as for one year, and then the inheritance or freehold were superadded by a separate deed of release, the transaction could not be affected by the statute; and that such release to the bargainee would be valid, without his entry upon the lands, being a consequence of the strong words in the Statute of Uses, which converts all vested uses at once into estates. The perfect convenience and general applicability of the lease and release recommended and established it as the common assurance of the kingdom. For it is preferable to a bargain and sale, and to a covenant to stand seised to uses, because it effects a transfer of the legal estate under the rules of the common law, and therefore the declaration of uses upon it needs not to be confined to persons from whom a consideration moves. It is also preferable to a bargain and sale, and still more to a feoffment, because no additional ceremony is necessary to its operation; but the transfer of property in land may be effected by it in any part of the world, as instantaneously, as the payment of money. And where the subject of conveyance is land in reversion or remainder, it is also preferable to a mere deed of grant, as it makes it unnecessary for the grantee, if his title be called in question, to prove that there was a particular estate in existence at the time of the grant.

It is immaterial to the operation of the release, whether the previous estate for a year be created by a bargain and sale under the statute of uses, or by a lease at common law, perfected by the entry of the lessee. In either case, the conveyance operates by transmutation of possession. It transfers a seisin to the releasee; and if the use be declared to him, he takes an estate, not by virtue of the Statute of Uses, but in the course of possession at the common law. But if the use be declared to any other person or persons, then it is executed by the statute. When the release is founded upon a bargain and sale for a year, it is necessary that the person making the conveyance should be capable of standing seised to a use. But if the releasor be incapable of standing seised to a use, then the estate for a year should be created by a lease at common law, accompanied by an actual entry on the part of the lessee.

If a lease and release be made to D. and his heirs, to the use of K. and his heirs, to the use of, or in trust for M. and his heirs, D. would take the seisin, K. the use or legal estate, and M. the equitable or beneficial interest, K. would therefore be a trustee for M., the *cestui que* trust, or beneficiary.

By 8 & 9 Vict., c. 106, § 2, it is enacted, that, after the 1st day of October, 1845, all corporeal tenements and hereditaments shall, as regards the conveyance of the immediate freehold thereof, be deemed to lie in grant as well as in livery; and that every deed, which, by force of this enactment, shall be effectual as a grant, shall be chargeable with the stamp duty with which the same deed would have been chargeable in case the same had been a release founded on a lease, or bargain and sale for a year, and also with the same stamp duty (exclusive of progressive duty) with which such lease or bargain and sale for a year would have been chargeable. *Watk. Conv. 343; Sand. Uses and Trusts, vol. ii., p. 73; Burton's Comp., 50; Hayes' Conv., vol. i., p. 77.*

LEASING, or **LESING**, gleaning.

LEASING-MAKING, slanderous and untrue speeches to the disdain, reproach, and contempt of the Sovereign, his council and proceedings, or to the dishonour, hurt, or prejudice of the Sovereign or his ancestors. *Scotch Acts, 1584, 1585, 1703, c. 4.*

LECCATOR, a debauched person.

LECHERWITE, **LAIRWITE**, or **LEGERWITE** [*legun*, Sax., to lie with, *wite* penalty], a fine for adultery or fornication, anciently paid to the lords of certain manors. *4 Inst. 206.*

LECTURER [*prælector*, Lat.], an instructor, a reader of lectures; also a clergyman who assists rectors, &c., in preaching, &c. See *7 & 8 Vict., c. 59.*

LECTURESHIP, the office of a lecturer.

LEDGREVE, or **LEDGRAVE**. See **LATHREVE**.

LEDO, the rising water; increase of the sea.

LEET, *court*, the view of frank-pledge, which is a court of record, held once in the year,

and not oftener, within a particular hundred, township, or manor, before the steward of the leet; being the King's court, granted by charter to the lords of certain hundreds and manors. Its original intent was to view the frank-pledges, that is, the freemen within the liberty; besides this, the preservation of the peace, and the chastisement of divers minute offences against the public good, are the objects both of the court-leet and the sheriff's tourn, which have exactly the same jurisdiction, one being only a larger species of the other; extending over more territory, but not over more causes. All freeholders within the precinct are obliged to attend them, and all persons commorant, *i. e.*, lying therein. But persons under twelve and above sixty years old, peers, clergymen, women, and the Crown's tenants in ancient demesne, are excused from attendance, all others being bound to attend upon the jury, if required, and make their due presentments. It was also anciently the custom to summon all the King's subjects, as they respectively grew to the years of discretion and strength, to come to the court-leet, and there take the oath of allegiance. The other general business of the leet and tourn was to present by jury all crimes whatsoever that happened within their jurisdiction. Both the tourn and leet have been for a long time in a declining way, and latterly have fallen into almost total desuetude, and their business has gradually devolved upon the quarter sessions. *3 Step. Com. 339.*

LEETS, or LECTS, meetings appointed for the nomination or election of ecclesiastical officers. *Scotch Term.*

LEGA, or LACTA, the allay of money. *Spelm.*

LEGABLE [*legabilis*, Lat.], capable of being bequeathed.

LEGACY [*legatum*], a bequest; some particular thing personal, given by a last will or testament; the person to whom it is given is styled the legatee; and if the gift be of the residue of an estate after payment of debts and legacies, he is then styled the residuary legatee.

The ecclesiastical courts originally and properly recognised suits for legacies charged upon, or to be paid out of, *personal* estate, but the authority of those courts, being inadequate to enforce a full discovery of assets, and in order to save a circuitry or multiplicity of suits and in ease of the suitor, courts of equity, at last, exercised complete jurisdiction in the matter, as well by enforcing the *discovery* as by decreeing *payment* of the legacy, on the ground that the executor was in the nature of a *trustee* for the parties beneficially interested. But where a suit is instituted in equity for payment of a legacy, payable out of the personal estate, if a question arise upon the right of the legatee to demand payment, it is governed by the civil law, whereas, if the legacy be charged upon a *real estate*, the common law rules prevail, because, in the latter case, the jurisdiction of the temporal court is original and exclusive.

Where a legacy has been bequeathed to a married woman, courts of equity exercise an exclusive jurisdiction, and will on a bill filed grant an injunction, so as to prevent the husband from proceeding in the spiritual court to obtain payment, because it cannot impose any terms, or compel the husband to make an adequate provision or settlement on his wife, as the Court of Chancery can oblige him to do, before he will be permitted to receive the legacy. And where a father has instituted a suit in a spiritual court for an infant's legacy, the Court of Chancery will grant an injunction, so as to prevent the money from getting into the father's power.

It will be observed, that in these cases the proceeding is not by prohibition, because the ecclesiastical court has jurisdiction, but by injunction operating *in personam* against the husband or father, and the court of equity merely interferes in consequence of its general jurisdiction over trustees, and to protect the interests of married women and infants. It may be remarked that in all cases of legacies, where there is a *continuing trust*, or, as has been said, "*anything like a trust*," the Court of Chancery will grant an injunction, because trusts are peculiarly proper for the cognizance of that court.

A *pecuniary* legacy, though assented to by the executor, cannot be recovered in a court of common law; but a *specific* legacy, assented to, may be so recovered.

Legacies are divided into:—

1. *Specific*, which are of two sorts, (a), when a particular chattel is specifically described and distinguished from all other things of the same kind, as a bequest of a sum of money in such a bag; or of a bond or other security, or a bequest of money out of such a security, or money in navy bills; (b), something of a particular species, which the executor may satisfy by delivering something of the same kind, as a horse, &c. Specific legatees have, in some respects, an advantage over those that are pecuniary, so as to be paid *in toto*, and not in average, on a deficiency of assets; but, in other respects, they are distinguished, to their disadvantage, from pecuniary legacies; for if stock, specifically given, be sold by the testator; or, being a lease, he is evicted; or, being goods, they are lost or burned; or, being a debt, it be lost by the debtor's insolvency, in all these cases such specific legatee is not entitled to contribution from the other legatees, and, therefore, pays no contribution towards them; it is, consequently, a rule that no legacy is to be held specific unless clearly so intended. A specific legacy vests immediately upon the testator's death, and, unlike a pecuniary legacy, carries interest from his death, but it is transferable only at the end of a year from the testator's death.

2. *Vested, or contingent*. If a legacy be bequeathed to one generally, *to be paid or payable* at the age of twenty-one, or any other age, and the legatee die before that

age, this is such an interest vested in the legatee, that it goes to his executor or administrator, and is receivable when the legatee would have attained twenty-one, if he had lived, it being *debitum in præsentibus* (a debt contracted at present), though *solvendum in futuro* (to be paid at a future time), the time being annexed to the payment, and not to the legacy itself; but if a legacy be bequeathed to a legatee at twenty-one; or if, or when, or provided he shall attain twenty-one, and the legatee die before that age, the legacy, being then contingent, is lapsed; and that whether the legacy be of money, a chattel, a partnership, or the profits of a trade, legacies expressed in such terms are construed in a different manner from what the same words are when applied to real estate; for where there is a devise of real estate to A., when he attain twenty-one, the estate vests immediately, and the dying under twenty-one is considered as a condition subsequent, on which the estate is to be divested. A legacy to the children of husband and wife, is confined to children born at the testator's death; so a devise to the younger children of the testator's son, to be paid at twenty-one, vests in those born at the testator's death.

3. *Lapsed.* It is a general rule, that (unless it be a joint legacy, which goes to the survivor, or a tenancy in common, with a bequest over to the survivor) if a legatee die in the testator's lifetime, the legacy is lapsed, and this though the will be made in execution of a power. It is a general rule, ever since the case of *Pawlet v. Pawlet*, 2 Ventr., 366; S. C., 1 Vern. 204, 321; and also in 2 Ch. Rep. 204, followed by a multitude of cases, that where money is given to be paid at a future time (for if payable presently, the rule cannot apply) out of a real estate, and the legatee die before the time, it sinks into the estate; and the same rule prevails where a legacy is charged on real estate, to be purchased with the residue of a personal estate. As to what legacies will not lapse: see LAPSE.

4. *Conditional.* As to personal property, conditions in restraint of marriage generally are void; and a condition, absolutely enjoining celibacy, or tantamount to a prohibition of marriage, would be void; but on gifts or devises of the inheritance or freehold of lands, almost any condition or limitation, however restricting the right of marriage, unless it amount to a prohibition of ever marrying, as an absolute injunction of celibacy has been considered effectual. *Stackpole v. Beaumont*, 3 Ves. 89. Under this head may be ranked the implied condition which attaches where a legacy is left to one who is appointed executor; in which case it has been held, that such legatee is not entitled to his legacy, unless he prove the will; but he may prove at any time, even after the hearing of the cause. It might be different, perhaps, if the legacy were by one will, and the appointment of executor by another.

5. *Accumulative.* The doctrine is this, that where the same specific thing is given twice, or where, in the same will, a like sum or quantity is given, for the same cause in the same act, and *totidem verbis*, or only with a small difference, a single and not a double or accumulative legacy passes; but, generally, if equal, greater or less sums be given in one will, or by two distinct writings of different dates, as by a will and codicil, or two codicils, this is an augmentation, and the legatee takes a double or accumulated legacy; but though simpliciter and *prima facie*, two different instruments giving legacies, whether of the same or of a larger amount, will be held accumulative, and not a substitution, yet the rule does not hold, if an intention of the testator to the contrary appear upon the face of the instrument, and small circumstances will raise this intention.

Where a bequest operates as a satisfaction of a debt owed to the legatee, it must be of an equal or greater sum—equally beneficial, of the same nature—payable immediately, and not upon a contingency.

A person shall not claim an interest under an instrument, whether a deed or will, without giving full effect to that instrument, so far as he can. This rule is universal and without exception founded upon the civil law, "*non permittitur prohibere voluntatem*" (it is not allowed to impeach a will).

For instance, if a testator give what is not his property, but which he supposes to be his, and gives to the person whose property it is, an interest by his will, that person will not be permitted to defeat the disposition, where it is in his power, and yet take under the will; and the same rule applies, though the testator knew he had no right to dispose of the lands, and yet, knowing it, takes upon himself to dispose of them. S. C., 1 Eden, 535. These are cases of election. So also, if a man devise to B. lands to which he has no title, and which are the estate and in the possession of A. (to whom he gives, by the same will, other parts of his estate), A. must elect and convey his estate to B., or he cannot take any benefit under the will. Where a party has made an election, and proceeds, contrary to such election, to recover estates at law, an injunction will be granted to restrain him.

By the civil law, if an estate were left in an illegal way, to a city, for instance, the profits to be yearly employed in a public show, to the memory of the deceased, the legacy is applied, *cy près*, to some other lawful use, by which the memory of the testator might be preserved. Hence, probably, in analogy to the civil law, the doctrine of *cy près*, was adopted in our law. Where it appears by a will, that the substantial intention of a testator is charity, though the mode in which it is directed to be executed fails by accident or other circumstances, the court will find some means of effectuating that general inten-

tion. If a man bequeath a sum of money to such charitable uses as he shall direct, by a codicil to be annexed to his will, or by a note in writing, and afterwards leave no such direction, either by note or codicil, equity has power to dispose of it to such charitable uses as it shall think fit.

If there is one particular object to which a testator's mind applies, as the building of a church at W—, and that purpose cannot be answered, the next of kin must take, there being, in that case, no *general* charitable intention; but where the testator intends to give all generally to charitable purposes, the increase will go *cy près*.

The interest given on legacies is 4l. per cent. per annum.

As to ademption, it is thus held, that an alienation by a testator of the subject of a legacy, if there be not anything else in the case, is an ademption, and equity will not set it up again. A bequest of a debt is adeemed by the debt being paid to the testator in his lifetime, whether the payment be compulsory or voluntary, and whether the sum be expressed in the bequest, or the debt is bequeathed generally.

It is a rule, and long recognised, that where a parent, or a person, *in loco parentis* (for it is otherwise in the case of a stranger or collateral relation, and a father is considered as a stranger to his natural child), gives a legacy as a portion, and afterwards, upon marriage, or any other occasion calling for it, advances presently and not contingently in the nature of a portion to that child (for there must be a resemblance between the two provisions—*ejusdem generis*), such advance, though less than the amount of the legacy, and *à fortiori* if more, or equal, will amount to an ademption of the gift by the will, and a court of equity will presume he meant to satisfy the one by the other.

By the 1 Wm. IV., c. 40, it is provided that an executor shall be deemed by courts of equity to be a trustee for the person or persons who would be entitled, under the Statutes of Distribution, in respect of any residue not expressly disposed of, unless it shall appear by the will or codicil that the person appointed executor was intended to take such residue beneficially.

In case of a deficiency of assets, legacies, by will or codicil (unless they are specific legacies) must *abate* in proportion, nor will the court strain to prefer one legatee to another, but will let the general rule of equality take place, unless there be strong words to the contrary, and something insuperable in the will, that does not justify the court in doing it. If, however, a legacy be given to a wife, in consideration that she release dower, it will be preferred.

If an executor pay one legatee, and afterwards there is a deficiency of assets, or if the executor become insolvent, and it appears that there is a deficiency of assets, the legatee is compellable in equity, and in equity only (for no action lies) to refund a proportion-

able part of what has been paid, and it is the same where the legacy is paid by virtue of a decree; but if the deficiency of assets is occasioned by the wasting of them by the executor, a legatee who has recovered his legacy, or to whom it has been voluntarily paid, is not compellable to refund. *Maddock's Prin. of Equity; Story's Eq. Juris.*

LEGACY DUTY, a tax paid to government on legacies, 55 Geo. III., c. 184. The Court of Exchequer has a summary remedy to recover it, by 42 Geo. III., c. 99, § 2.

LEGAL, done or conceived according to law.

LEGAL ASSETS. See **ASSETS**.

LEGAL DEBTS, those that are recoverable in a court of common law, as a bill of exchange, a bond, a simple-contract debt.

LEGAL ESTATES. See **ESTATE**.

LEGAL REVERSION, the period of seven years within which a proprietor is at liberty to redeem land adjudged from him for debt. *Scotch Law*.

LEGALIS HOMO, a person who stands *rectus in curia*, neither outlawed, excommunicated, nor infamous.

LEGALIS MONETA ANGLIÆ (lawful money of England). 1 Inst. 207.

LEGALITY, or **LEGALNESS**, lawfulness.

LEGALIZE, to authorize; to make lawful.

LEGALLY, according to law.

LEGAMANNUS. See **LAGEMAN**.

LEGANTINE, or **LEGATINE CONSTITUTIONS**, ecclesiastical laws enacted in national synods, held under the Cardinals Otho and Othobon, legates from Pope Gregory IX. and Pope Clement IV., in the reign of King Henry III., about the years 1220 and 1268.

LEGATARY [*legatum*], a legatee.

LEGATE [*legare, deligare*, Lat., to send], a deputy; an ambassador, the Pope's nuncio.

There are three kinds:—1. *Legates à latere*, being such as the Pope commissions to take his place in councils, and so called, because he never gives this office to any but his favorites and confidants, who are always *à latere* at his side. 2. *Legates de latere*, or *legati dati*, those entrusted with apostolical legation; they acted under a special commission. 3. *Legates by office*, or *legati nati*, those that were legates by virtue of their offices, as in England, the Archbishop of Canterbury, in former times. *Encyc. Lond.*

LEGATEE, one who has a legacy left to him.

LEGATOR, one who makes a will, and leaves legacies.

Legatos violare contra jus gentium est.—(It is contrary to the law of nations to injure ambassadors.)

LEGATUM, a legacy given to the church, or an accustomed mortuary. *Cowell*.

Legatum, morte testatoris tantum confirmatur, sicut donatio inter vivos traditione solâ. Dyer, 143.—(A legacy is confirmed by the death of a testator, in the same manner as a gift from a living person is by delivery alone.)

Legatus, regis vice fungitur à quo destinatur et honorandus est sicut ille cujus vicem gerit. l. 2

(Co. 17.—(An ambassador fills the place of the King by whom he is sent, and is to be honored as he is whose place he fills.)

LEGEM FACERE, to make law upon oath.

LEGEM HABERE, to be capable of giving evidence upon oath.

Legem terræ amittentes perpetuam infamiae notam inde meriti incurrunt. 3 Inst. 221.—(Destroyers of the law of the land, thence justly incur the perpetual note of infamy.)

LEGER, LEIGER, or LEDGER [*legger*, Dut., to lie], any thing that lies in a place; as, a leger-book, a book that lies in a counting house; leger-ambassador, a resident ambassador.

LEGERGILD. See LAIRWITR.

Leges Angliæ sunt tripartitæ: jus commune, consuetudines, ac decreta comitiorum.—(The laws of England are threefold: common law, customs, and decrees of Parliament.)

Leges figendi et refigendi consuetudo periculosissima est. 4 Co. ad Lect.—(The custom of making and annulling laws is most dangerous.)

Leges naturæ perfectissimæ et immutabiles: humani vero juris conditio semper in infinitum decurrit, et nihil est in eo quod perpetuo stare possit. Leges humanæ nascuntur, vivunt, et moriuntur. 7 Co. 25.—(The laws of nature are most firm and immutable: but the condition of human law ever tends to infinity, and there is nothing in it which can continue perpetually. Human laws are born, live, and die.)

Leges non verbis sed rebus sunt impositæ. 10 Co. 101.—(Laws are imposed on things, not words.)

Leges posteriores priores contrarias abrogant. 2 Rol. Rep. 410.—(Later laws abrogate prior contrary laws.)

LEGIOSUS, litigious, subjected to a course of law. Cowell.

Legibus sumptis desinentibus, lege naturæ utendum est. 2 Rol. Rep. 98.—(Laws imposed by the state, failing, we must act by the law of nature.)

Legis constructio non facit injuriam. Co. Lit. 183.—(The construction of law does no injury.)

Legis interpretatio legis vim obtinet. Elles. Post. 55.—(The interpretation of law obtains the force of law.)

Legislatorum est viva vox, rebus et non verbis, legem imponere. 10 Co. 101.—(The voice of legislators is a living voice, to impose law on things, and not on words.)

Legis minister non tenetur, in executione officii sui fugere aut retrocedere. 6 Co. 68.—(The minister of the law is not bound, in the execution of his office, either to avoid or flinch.)

Legitimè imperanti parere necesse est. Jenk. Cent. 120.—(It is necessary to obey one legitimately commanding.)

LEGITIM, the children's claim out of the free moveable estate of their father, amounting to one-half or one-third (according to circumstances) of his moveables, after paying his debts. Scotch Law.

LEGISLATION, the act of giving laws.

LEGISLATOR, a law-giver.

LEGISLATRESS, a female law-giver.

LEGISLATURE, the power that makes laws.

LEGITIMACY, lawful birth.

LEGITIMATING, the act of making legal, or of giving the right of lawful birth.

LEGRUITA, a fine for criminal conversation with a woman. *Old Records.*

LEIDGRAVE [*leid*], an officer under the Saxon government who had jurisdiction over a lath. *Encyc. Lond.*

LEIGH, a meadow.

LEIPA, one who escapes, or departs from service.

Le ley de Dieu et le ley de terre sont tout un, et l'un et l'autre preserve et sauveur le common et publique bien del terre. Keil. 191.—(The law of God, and the law of the land, are all one; and both preserve and favour the common and public good of the land.)

Le ley est le plus haut enheritance que le roy ad, car per le ley il mesme et tous ses sujets sont rules, et si le ley ne fuit, nul roy ne nul enheritance serra. 1 J. H. 6, 63.—(The law is the highest inheritance that the king possesses: for, by the law, both he and all his subjects are ruled; and if there were no law, there would be neither king nor inheritance.)

Le ley voit plus tost suffer un mischiese que un inconuenience. Lit. § 231.—(The law would rather suffer a mischief than an inconvenience.)

LENT [*lenten*, Sax., the springs], the quadregesimal fast; a time of abstinence; the time from Ash-Wednesday to Easter-day.

LEOD, the people, nation, country, &c. Gibbon's *Camd.* See WER-GELD.

LEODIUM, liege.

LEOHT-GESCEOT [*symbolum luminis*], a tax for supplying the church with lights. *Anc. Inst. Eng.*

LEP AND LACE, a custom in the manor of Writtle, in Essex, that every cart which goes over Greenbury within that manor (except it be the cart of a nobleman) shall pay 4d. to the lord. *Blount.*

LEPORIUM, a place where hares are kept. *Mon. Ang. t. 2, 1035.*

LEPROSO AMOVENDO, an ancient writ that lay to remove a leper or leazar, who thrust himself into the company of his neighbours in any parish, either in the church, or at other public meetings, to their annoyance. *Reg. Orig. 237.*

LE ROY (or LA REINE) LE VEUT (the King (or the Queen) wills it). The form of the royal assent to public bills in Parliament.

LE ROY (or LA REINE) S'AVISERA (the King (or the Queen) will advise upon it). The form of words used to express a denial of the royal assent.

The last occasion on which this power was exercised was in 1707, when Queen Anne refused her assent to a bill for settling the militia in Scotland.

LE ROY (or LA REINE) REMERCIE SES LOYAL SUJETS, ACCEPTE LEUR

BENEVOLENCE, ET AUSSI LE VEUT. (The King (or Queen) thanks his (or her) loyal subjects, accepts their benevolence, and wills it to be so). The form of the royal assent to a bill of supply.

LESCHEWES, trees fallen by chance or wind-falls.

LESIA, a leash of greyhounds, now restrained to the number of three, but formerly more. *Spelm.*

LESPEGEND, an inferior office in forests, to take care of the vert and venison therein, &c.

LES PRELATS, SEIGNEURS, ET COMMUNS, EN CE PRESENT PARLIAMENT ASSEMBLES, AU NOM DE TOUTS VOUS AUTRES SUBJECTS REMERCIENT TRES HUMBLEMENT VOTRE MAJESTE, ET PRIENT A DIEU VOUS DONNER EN SANTE BONE VIE ET LONGUE. (The prelates, lords, and commons, in this parliament assembled, in the name of all your other subjects, most humbly thank your Majesty, and pray to God to grant you good health and long life).

The form of words used by the clerk in an act of grace, which has the royal assent before it is agreed to by the two houses.

LESSA, a legacy.

LESSEE, the person to whom a lease is given.

LESSOR, one who lets anything to another by lease.

LESTAGEFRY, lestage-free, or exempt from the duty of paying ballast-money.

LESTAGIUM, lastage; a duty laid on the cargo of a ship.

LESWES, or LESVES, pastures. *Domesday.*

LETA, a court leet.

LETHERWITE. See **LEIRWIT.**

LETTER OF ABSOLUTION, the mode formerly resorted to by an abbot for the release of his brethren, in order to qualify them for entering into some other order of religion.

LETTER OF ADMINISTRATION. See **ADMINISTRATOR.**

LETTER OF ATTORNEY, POWER OF ATTORNEY, or PROCURATION, a writing authorizing another person, who, in such case, is called the attorney of the person appointing him, to do any lawful act in the stead of another; as to give seisin of lands, receive debts, or sue a third person, &c. It is either general or special. The nature of this instrument is to give the attorney the full power and authority of the maker to accomplish the act intended to be performed; and sometimes it is revocable, and sometimes not so; but, when they are revocable, it is usually a bare authority only; they are irrevocable when debts, &c., are assured to another, in which case the word "irrevocably" is usually inserted; and the intention of them then is to enable the assignee to receive the debt, &c., to his own use. But revocable letters of attorney may be dissolved either by acts of the parties or operation of law. See **REVOCATION OF AGENCY.**

LETTER-CARRIER, a postman.

LETTER-CLAUSE, close letter, opposed to letters patent, being commonly sealed up

with the royal signet, or privy seal; but letters patent are left open and sealed with the broad seal.

LETTER OF CREDIT, a letter written by a merchant or correspondent to another, requesting him to credit the bearer with a certain sum of money.

LETTER OF EXCHANGE, a bill of exchange: which see.

LETTER OF HORNING. See **HORNING.**

LETTER OF LICENCE, an instrument or writing made by creditors to a man that has failed in his credit, allowing him longer time for the payment of his debts, and protecting him from arrest in going about his affairs. It gives leave to the person to whom it is granted to resort freely to his creditors, or any others, and to compound debts, &c. And the creditors sometimes severally covenant, that if the debtor shall receive any molestation or hindrance from any of them, he shall be acquitted and discharged of his debt against such creditors, &c.

LETTER OF MARQUE, commissions for extraordinary reprisals for reparation to merchants taken and despoiled by strangers at sea, grantable by the Secretaries of State, with the approbation of the Sovereign and council; and usually in time of war. The words *marque* and *reprisal* are used as synonymous terms, although the latter is strictly, taking in return; the former, passing the frontiers in order to such taking.

These letters are grantable by the law of nations, wherever the subjects of one state are oppressed and injured by those of another, and justice is denied by that state to which the oppressor belongs. In this case, letters of marque and reprisal may be obtained, in order to seize the bodies or goods of the subjects of the offending state, until satisfaction be made, wherever they happen to be found; and, in fact, this custom seems dictated by nature. The necessity, however, is obvious of calling in the sovereign power to determine when reprisals may be made, else every private sufferer would be a judge in his own cause. 4 *Hen. V., c. 7*; *Muratori's Antichità Italiane*, tit. *Rappresaglie*; *Malvezzi's Chron. of Brescia*.

But the term itself is now somewhat differently applied. If during war a subject should take an enemy's ship, without commission from the Crown, the prize would, by the effect of the prerogative, become a droit of admiralty, and would belong, not to the captor, but to the Crown. Therefore, to encourage merchants and others to fit out privateers or armed ships in time of war, the lords of the admiralty have been empowered, by various acts of Parliament, and sometimes by proclamation of the Sovereign in council, to grant commissions to the owners of such ships, and the prizes captured by them have been directed to be divided between such owners and the captains and crews. But the owners, before the commission is granted, give security to the admiralty to make compensation for any violation of treaties be-

tween those powers with whom the nation is at peace; and that such armed ship shall not be employed in smuggling. These commissions are ordinarily denominated letters of marque, in which sense alone the term is now accepted. 2 *Step. Com.* 515.

LETTER MISSIVE. If a peer be a defendant in the Court of Chancery, the Lord Chancellor sends a letter missive to him, to request his appearance, together with a copy of the bill, petition, and order; if he neglect to appear to this, he is then served with a subpoena to appear and answer; if he continue still in contempt, a sequestration *nisi*, which is made absolute in the usual way, issues immediately against his lands and goods, without any of the arresting processes of attachment, &c., which cannot affect a lord of Parliament.

Also, for electing a bishop, a letter missive from the Sovereign is sent to the dean and chapter, containing the name of the person whom he would have them elect.

LETTERS PATENT, or LETTERS OVERT [*literæ patentēs*], writings of the Queen, sealed with the Great Seal of England, whereby a person is able to do or enjoy that which otherwise he could not. They are so called because they are open, with the seal affixed and ready to be shown for confirmation of the authority thereby given. Peers are sometimes created by letters patent, and letters patent of precedence are granted to barristers. Aliens are made denizens by this means; and especially new inventions protected; hence the incorporeal chattel of patent right.

A patent right is a privilege granted by the Crown to the first inventor of any new contrivance in the manufactures, that he alone shall be entitled, during a limited period, to make articles according to his own invention. 21 *Jac. I.*, c. 3. A manufacture that is the subject of a patent right, must be new within this realm, and must be such as others, at the time of making such letters patent, shall not use. The person applying for the patent must be the true and first inventor of it; yet where the secret is acquired abroad by one who afterwards introduces it into the realm, he is considered by the law as the true inventor. A patent right granted as to England, will not extend to Ireland.

The grant is entirely an act of royal favour, but yet obtained without difficulty, supposing there be no objection to the grant. Letters patent are often taken out in the joint names of two or three persons—if the secret should be discovered that one or two of these persons bore no part in the invention of the machines, the patents would be void. Every manufacture, therefore, within the meaning of the statute, must at least be—

1. New.
2. Not used before, neither
 - (a) By others, nor
 - (b) By the inventor.
3. Vendible.
4. Useful.

Though it may be learned abroad (*Edgebery v. Stephens*, 2 Salk. 477), yet it must not be suggested by a friend at home (*Tenant's Patent*, Dav. Pat. G. 429). When the objects of two grants are substantially the same, they may both be valid, if the modes of attaining the desired effect are essentially different (*Russell v. Cowley*, 1 C., M., & R. 864). It would be very difficult to say how much a substance or machine might be used by way of experiment before the patent is obtained, without running a great risk of invalidating the grant (*Severne v. Olive*, 3 B. & B. 72).

The mode of proceeding to obtain it is as follows:—An application is made for it by petition to the Crown, the allegations of which are to be supported by a declaration in lieu of oath, made and subscribed by the party, under the provisions of the act relating to oaths, 5 & 6 Wm. IV., c. 62, § 11, that he is the true and first inventor, and that the article has not been before made or used to his knowledge or belief. This petition, when lodged, is referred to the law officers of the Crown, for their opinion. Supposing their report to be favourable, the matter takes its course through several offices, until a warrant is at length issued to the Lord Chancellor, which, being taken to the patent office, the letters patent are thereupon made out under the Great Seal. This application, however, may be opposed in its progress by any person having an adverse interest, and having entered a *caveat* for the purpose. The term granted is fourteen years. The letters patent contain a proviso that if the patentee shall not particularly describe the nature of his invention, and in what manner it is to be performed, by an instrument in writing under his hand and seal, enrolled in the High Court of Chancery within a limited period (which is usually, in the case of an English patent, one month from the date of the letters patent), the grant they contain shall be void.

The description thus directed to be enrolled is called the specification of the patent, and its object is to put the public in full possession of the inventor's secret, so that any person may be in a condition to avail himself of it, when the period of exclusive privilege is expired. It should be such a description as to enable persons of ordinary skill to make the patent article by simply following the directions given, without resorting to contrivances of their own. The specification is bad, when—

1. Its terms are ambiguous.
2. Necessary descriptions are omitted.
3. Parts claimed which are not original.
4. Things are inserted to mislead.
5. The drawings are incorrect.
6. One of different ways or of different ingredients named, fails.
7. One of several effects specified is not produced.
8. The things described are not the best known to the patentee.

A patent right is assignable by deed, but an act of Parliament must be obtained to enable the patentee to assign to more than twelve persons. The patentee may also grant deeds of license to any one or more persons to manufacture the article, and this without any entire alienation of his interest.

The objects obtained under the 5 & 6 Wm. IV., c. 83, and 2 & 3 Vict., c. 67, which require the remedies in cases of patents to be applied by the Judicial Committee of her Majesty's most honourable Privy Council, or by application to the Crown law officers, are—

1. A remedy where it is discovered that a patentee has claimed something used before.

2. The amendment, by a disclaimer, of the description of the invention in the title or specification.

3. The prolongation of the term of a patent, where the patentee has not reaped, within the period to which his privilege is limited, any reward fairly adequate to the labour and ingenuity employed.

An action for damages for the infringement of a patent, is an action on the case. A profert is made of the letters patent, which are recited; but oyer of them is never allowed, because they are matters of record. 1 Chit. Pl. 142. The venue is always laid in Middlesex, because the patent, which is the *substratum* of the action, is tested at Westminster. Defendant must plead all his defences (*Rules H. T.*, 4 Wm. IV., 1834); he must also deliver a list of the objections upon which he intends to rely at the trial. 5 & 6 Wm. IV., c. 83, § 5.

The 7 § of the same statute gives a penalty of 50*l.* against a party using the name, &c., of a patent, to be recovered by action of debt, bill, plaint, process, or information, one half to his Majesty, his heirs and successors, and the other to any person who shall sue for the same.

If a person have been long in the exclusive use of a patent, a special injunction out of Chancery may be obtained against a person invading it, until the right is tried at law.

Letters patent are void, if

1. Contrary to law, or
2. Mischievous to the state, either
 - (a) By their raising the price of commodities at home;
 - (b) Or being hurtful to trade;
 - (c) Or being generally inconvenient.

The *scire facias* for repealing letters patent is an original writ, and founded on some matter of record; it issues out of the common law jurisdiction of the High Court of Chancery. 2 Step. Com. 86; *Godson on Patents*.

LETTERS OF REQUEST, the mode of commencing an original suit in the Court of Arches, instead of proceeding in the first instance in the Consistory Court.

These letters dispense with the necessity of instituting a suit, in the first instance, in an inferior ecclesiastical jurisdiction, and

authorize it to be instituted in the superior court, which could otherwise only exercise jurisdiction as a court of appeal. The Judge of the inferior court, who signs the letter of request, by so doing waives or remits his own jurisdiction, and, generally speaking, at once the jurisdiction attaches in the appellate court, and this without any consent or even communication with the intended defendant. 1 Hagg. Eccle. R., 4, note (a).

LETTERS OF SAFE-CONDUCT. No subject of a nation at war with us, can, by the law of nations, come into the realm, nor can travel himself upon the high seas, or send his goods and merchandize from one place to another without danger of being seized by our subjects, unless he has letters of safe-conduct, which, by divers old statutes, must be granted under the Great Seal, and enrolled in Chancery, or else are of no effect: the Sovereign being supposed the best judge of such emergencies as may deserve exemption from the general law of arms. But passports under the Sovereign's sign-manual or licences from our ambassadors abroad, are now more usually obtained, and are allowed to be of equal validity. 1 Chit. Com. Law, 60.

LETTERS DE CACHET (sealed letters).

LEVANT ET COUCHANT [*levantes et couchantes*], cattle that have been so long in the ground of another, that they have lain down and risen to feed, supposed to be a day and a night. *Terms de Ley*.

LEVARI FACIAS (that you cause to be levied), a writ of execution at common law, commanding the sheriff to levy or make of the lands and chattels of the judgment debtor the sum recovered by the judgment. The sheriff, however, is not authorized to sell or extend the lands, or deliver them to the creditor, but must collect the debt from the issues and profits of the land, and from the sale of the chattels, this writ, excepting in the case of outlawry, has been completely superseded by the writ of *elegit*. Chit. Arch. Prac. 448.

LEUCATA, a space of ground as much as a mile contains. *Cowell*.

LEVEE, the concourse of those who crowd round a man of power in the morning.

LEVIABLE, that may be levied. *Bacon's Henry VII.*

LEVIRATE [*levor*, Lat., husband's brother or brother-in-law], the appellation of an ancient law, existing prior to the time of Moses (Gen. xxviii. 8—12), to this effect: if in any case the husband died without issue, leaving a widow, the brother of the deceased, or the nearest male relation, was bound to marry the widow, to give to the first-born son the name of the deceased kinsman, to insert his name in the genealogical register, and to deliver into his possession the estate of the deceased. This peculiar law had its origin, doubtless, in that strong desire of offspring, which was entertained by the Jewish nation. Moses was aware that the

levirate law was in some respects pernicious, but when he recollected the feeling which was at the bottom of it, and the importance of that feeling being cherished, he did not think proper to abolish it. While, therefore, he did not withhold from it his sanction, and thought proper to make it one of the prominent laws of the Jewish state, he reduced it within certain limits, and thereby rendered the injurious consequences as small as possible. He accordingly enacted, that whoever was unwilling to marry the wife of his deceased kinsman, might decline it in the presence of Judges, in case he would allow the woman the privilege of taking off his shoes, of spitting in his face, and of addressing him with the discreditable salutation of *washed*, an appellation which, in effect, would be the same with stigmatizing him as the *destroyer of his father's house*. *Deut.* xxv. 5—10. The disgrace which would be the consequence of such treatment from the widow, was not so great but a person who was determined not to marry, would dare to encounter it. *Ruth* iv. 7, 8; *Matt.* xxii. 23—28; *Jahn's Bib. Antiq.*, part 1, chap. x. § 157.

The same custom or law prevails in some parts of India. *Elliot's Asiatic Researches*, vol. iii. p. 35.

LEVITICAL DEGREES, degrees of kindred within which persons are prohibited to marry. They are set forth in the eighteenth chapter of Leviticus.

LEVY [*levare*], the act of raising money or men.

LEWDNESS, lustful licentiousness; an offence against the public economy, when of an open and notorious character; as by frequenting houses of ill-fame, which is an indictable offence, or by some grossly scandalous and public indecency, for which the punishment at common law is fine and imprisonment.

LEX, law.

LEX AMISSA, one who is an infamous, perjured, or outlawed person. *Bract.*, l. 4, c. 19, p. 2.

Lex æquitate gaudet; appetit perfectum; est norma recti. Jenk. Cent. 36.—(Law rejoices in equity; it covets perfection; it is a rule of right.)

Lex aliquando sequitur æquitatem. 3 Wils. 119.—(Law sometimes follows equity.)

Lex Angliæ est lex misericordiæ. 2 Inst. 315.—(The law of England is a law of mercy.)

Lex Angliæ non patitur absurdum. 9 Co. 22.—(The law of England suffers not an absurdity.)

Lex Angliæ nunquam matris sed semper patris conditionem imitari partum judicat. Co. Lit. 123.—(The law of England rules that the offspring shall always follow the condition of the father; never that of the mother.)

Lex Angliæ nunquam sine Parlamento mutare non potest. 2 Inst. 218.—(The law of England cannot be changed but by Parliament.)

LEX APOSTATA, a thing contrary to law.

Lex beneficialis rei consimili remedium præstat. 2 Inst. 689.—(A beneficial law affords a remedy of a similar case.)

LEX BREHONIA, the Brehon or Irish law, overthrown by King John.

LEX BRETOISE, the law of the ancient Britons or Marches of Wales.

Lex citius tolerare vult privatum damnum quam publicum malum. Co. Lit. 132.—(The law should more readily tolerate a private loss than a public evil.)

Lex deficere non potest in justitiâ exhibendâ. Co. Lit. 197.—(The law cannot be defective in dispensing justice.)

LEX DERAISNIA, the proof of a thing which one denies to be done by him, where another affirms it; defeating the assertion of his adversary, and showing it to be against reason or probability: this was used among the old Romans, as well as the Normans. *Cowell*.

Lex dilationes semper exhorret. 2 Inst. 240.—(The law always abhors delays.)

Lex est ab Æterno. Jenk. Cent. 34.—(Law is from the Eternal.)

Lex est anima regis, et rex est anima legis.—(The law is the soul of the King; and the King is the soul of the law.)

Lex est dictamen rationis. Jenk. Cent. 117.—(Law is the dictate of reason.)

Lex est exercitûs Judicium tutissimus dux. 2 Inst. 526.—(The law is the safest leader of the army of Judges.)

Lex est ratio summa, quæ jubet quæ sunt utilia et necessaria, et contraria prohibet. Co. Lit. 319 b.—(Law is the highest reason, which commands those things which are useful and necessary, and forbids what is contrary thereto.)

Lex est sanctio sancta, jubens honesta, et prohibens contraria. 2 Inst. 587.—(Law is a sacred sanction, commanding what is honourable, and forbidding what is contrary.)

Lex est tutissima cassis, sub clypeo legis nemo decipitur. 2 Inst. 56.—(Law is the safest helmet; under the shield of the law none is deceived.)

Lex et consuetudo Parliamenti: ista lex est ab omnibus querenda, à multis ignorata, à paucis cognita. Co. Lit. 11 b.—(The law and custom of Parliament: this law is sought by all, unknown to many, known to few.)

Lex fingit ubi subsistit æquitas. 11 Co. 90.—(The law feigns where equity subsists.)

LEX FORI (the law of the place).

It is universally admitted and established, that the forms of remedies, and the modes of proceeding, and the execution of judgments, are to be regulated solely and exclusively by the laws of the place where the action is instituted; or, as the civilians uniformly express it, according to the *lex fori*.

Lord Brougham, in *Don v. Lippmann*, 5 Clark & F. 1, remarked thus on this subject:—"The law on this point is well settled in this country, where this distinction is properly taken, that whatever relates to the remedy to be enforced, must be determined by the *lex fori*, the law of the country, to the tribunals of which the appeal is made. This rule is clearly laid down in the *British Linen Company v. Drummond*, 10 Barn. & C. 903; *De la Vega v. Vianna*, 1 Barn. & A. 284;

and in *Huber v. Steiner*, 2 Scott, 304; 1 Hodges, 206; 2 Bing. N. C. 202; 2 Dowl. P.C. 784; and 4 Moore & Scott, 328; though the reverse had previously been recognized in *Williams v. Jones*, 13 East, 439. Then, assuming that to be the settled rule, the only question in the case would be, whether the law now to be enforced is the law which relates to the contract itself, or to the remedy. When both the parties reside in the country where the act is done, they look of course to the law of the country in which they reside. The contract being silent as to the law by which it is to be governed, nothing is more likely than that the *lex loci contractus* should be considered at the time the rule; for the parties would not suppose that the contract might afterwards come before the tribunals of a foreign country. But it is otherwise when the remedy actually comes to be enforced. The parties do not necessarily look to the remedy when they make the contract. They bind themselves to do what the law they live under requires; but as they bind themselves generally, it may be taken as if they had contemplated the possibility of enforcing it in another country. That is the lowest ground upon which to place the case. The inconveniences of pursuing a different course is manifest. Not only the principles of the law, but the known course of the courts, render it necessary that the rules of precedent should be adopted, and that the parties should take the law as they find it when they come to enforce their contract. It is true, that there may be no difficulty in knowing the law of the place of the contract, while there may be a great difficulty in knowing that of the place of the remedy. But that is no answer to the rule. The distinction which exists as to the principle of applying the remedy, exists with even greater force as to the practice of the courts where the remedy is to be enforced. No one can say, that because the contract has been made abroad, the form of action known in the foreign court must be pursued in the courts where the contract is to be enforced, or the other preliminary proceedings of those courts must be adopted, or that the rules of pleading, or the curial practice of the foreign country must necessarily be followed. No one will assert, that before the jury court in Scotland, the English creditor of a domiciled Scotchman would have the right to call for a trial of the case by jury; or, take the converse, that a Scotchman might refuse the intervention of a jury here, and insist on having the case tried, as in Scotland, by the Judge only. No one will contend in terms, that the foreign rules of evidence should guide us in such cases; and yet it is not so easy to avoid that principle in practice, if you once admit, that though the remedy is to be enforced in one country, it is to be enforced according to the laws which govern another country."

The doctrine of the common law is so fully established on this point, that it would

be useless to do more than to state the universal principle which it has promulgated; that is to say, that, in regard to the merits and rights involved in actions, the law of the place where they originated is to govern. But the forms of remedies and the order of judicial proceedings are to be according to the law of the place where the action is instituted, without any regard to the domicile of the parties, the origin of the right, or the country of the act. *Story's Conf. of Laws*, 808.

LEX HOSTILIA DE FURTIS, a Roman law, which provided that a prosecution for theft might be carried on without the owner's intervention. 4 *Step. Com.* 157.

Lex intendit vicinum vicini facta scire. Co. Lit. 78.—(The law presumes one neighbour to know the actions of another.)

Lex judicat de rebus necessariis faciendis quasi re ipsa factis.—(The law judges of things which must necessarily be done, as if actually done.)

LEX JUDICIALIS, an ordeal.

LEX JULIA MAJESTATIS, a law promulgated by Augustus Cæsar among the Romans, comprehending all the ancient laws that had before been enacted to punish transgressors against the state. 4 *Step. Com.* 185.

LEX LOCI CONTRACTUS (the law of the place of the contract). Generally speaking, the validity of a contract is decided by the law of the place where it is made. If valid there, it is, by the general law of nations (*jure gentium*), held valid everywhere, by the tacit or implied consent of the parties. The rule is founded, not merely in the convenience, but in the necessities of nations; for otherwise it would be impracticable for them to carry on an extensive intercourse and commerce with each other. The whole system of agencies, of purchases and sales, of mutual credits, and of transfers of negotiable instruments, rests on this foundation; and the nation which should refuse to acknowledge the common principles, would soon find its whole commercial intercourse reduced to a state like that in which it now exists among savage tribes, among the barbarous nations of Sumatra, and among other portions of Asia washed by the Pacific.

The same rule applies *vice versa* to the invalidity of contracts; if void or illegal by the law of the place of the contract, they are generally held void and illegal everywhere. This would seem to be a principle derived from the very elements of natural justice. The code has expounded it in strong terms: *Nullum enim pactum, nullam conventionem, nullum contractum, inter eos ridere volumus subsequutum, qui contrahunt lege contrahere prohibente* (l. i. tit. 14, l. 5). If void in its origin, it seems difficult to find any principle upon which any subsequent validity can be given to it in any other country. But there is an exception to the rule as to the universal validity of contracts; which is, that no nation is bound to recognise or enforce

any contracts which are injurious to its own interests, or to those of its own subjects.

A few cases may serve to illustrate the exceptions under each of the foregoing heads:—

First, contracts which are in evasion or fraud of the laws of a particular country.

The second class of excepted contracts comprehends those against good morals, or religion, or public rights.

The next class of excepted contracts comprehends those which are opposed to the national policy and institutions.

Another rule, naturally flowing from or rather illustrative of that already stated respecting the validity of contracts is, that all the formalities, proofs, or authentications of them, which are required by the *lex loci*, are indispensable to their validity everywhere else.

Another rule, illustrative of the same general principle, is, that the law of the place of the contract is to govern, as to the nature, the obligation, and the interpretation of the contract:—

First, as to the nature of the contract, by which is meant those qualities which properly belong to it, and by law or custom always accompany it, or inhere in it. Foreign jurists are accustomed to call such qualities *naturalia contractus*.

Secondly, the obligation of the contract, which, though often confounded with, is distinguishable from, its nature. The obligation of a contract is the duty to perform it, whatever may be its nature. It may be a moral obligation, or a legal obligation, or both. But when we speak of obligation generally, we mean legal obligation; that is, the right to performance which the law confers on one party, and the corresponding duty of performance to which it binds the other. This is what the French jurists call *le lien du contrat* (the legal tie of the contract), *onus conventionis*, and what the civilians generally call *vinculum juris* or *vinculum obligationis*. The Institutes of Justinian have thus defined it: *Obligatio est juris vinculum, quo necessitate adstringimur alicujus rei solvendæ secundum nostræ civitatis jura* (l. 3, t. 14). A contract may, in its nature, be purely voluntary, and possess no legal obligation. It may be a mere naked pact (*nudum pactum*). It may possess a legal obligation; but the laws may limit the extent and force of that obligation *personam*, or *in rem*. It may bind the party personally, but not bind his estate; or it may bind his estate, and not bind his person. The obligation may be limited in its operation or duration; or it may be revocable or dissoluble in certain future events, or under peculiar circumstances.

Thirdly, the interpretation of contracts. Upon this subject there would scarcely seem to be any room for doubt or disputation. There are certain general rules of interpretation, recognized by all nations, which form the basis of all reasoning on the subject of contracts. The object is, to ascertain the real intention of the parties in their

stipulations; and when the latter are silent or ambiguous, to ascertain what is the true sense of the words used, and what ought to be implied, in order to give them their true and full effect. The primary rule in all expositions of this sort, is that of common sense, so well expressed in the Digest. *In conventionibus contrahentium voluntas potius quam verba spectari placuit* (l. 50, tit. 16, l. 219). But in many cases the words used in contracts have different meanings attached to them in different places, by law or by custom; and where the words are in themselves obscure or ambiguous, custom and usage in a particular place may give them an exact and appropriate meaning. Hence, the rule has found admission into almost all, if not into all, systems of jurisprudence, that if the full and entire intention of the parties do not appear from the words of the contract, and if it can be interpreted by any custom or usage of the place where it is made, that course is to be adopted.

The general rule is, that a defence or discharge good by the law of the place where the contract is made or is to be performed, is to be held of equal validity in every other place where the question may come to be litigated.

The converse doctrine is equally well established, viz., that the discharge of a contract by the law of a place where the contract was not made or not to be performed, will not be a discharge of it in any other country. *Story's Conf. of Law*, c. viii.

LEX MERCATORIA, the mercantile law.

Lex necessitatis est lex temporis, i. e., *instantis*.

Hob. 159.—(The law of necessity is the law of time, that is, present.)

Lex neminem cogit ad vana seu inutilia peragenda. 5 Co. 21.—(The law forces no one to do vain or useless things.)

Lex nemini operatur iniquum; nemini facit injuriam. Jenk. Cent. 22.—(The law works harm to no one; does injury to no one.)

Lex nil facit frustra; nil jubet frustra. 3 Buls. 279; Jenk. Cent. 17.—(The law does nothing vainly; commands nothing vainly.)

LEX NON SCRIPTA, the unwritten or common law.

Lex non a rege est violanda. Jenk. Cent. 7.—(The law is not to be violated by the King.)

Lex non curat de minimis. Hob. 88.—(The law cares not about trifles.)

Lex non cogit ad impossibilia. Hob. 96.—(The law forces not to impossibilities.)

Lex non deficit in justitiâ exhibendâ. Jenk. Cent. 31.—(The law is not defective in developing justice.)

Lex non præcipit inutilia, quia inutilis labor stultus. Co. Lit. 197.—(The law commands not useless things, because useless labour is foolish.)

Lex non favet delicatorum votis. 9 Co. 58.—(The law favours not the wishes of the dainty.)

Lex non intendit aliquid impossibile. 12 Co. 89.—(The law intends not any thing impossible.)

Lex non patitur fractiones et divisiones statutum. 1 Co. 87.—(The law suffers no fractions and divisions of statutes.)

Lex non requirit verificari quod apparet curiæ. 9 Co. 54.—(The law does not require that which is apparent to the court to be verified.)

Lex plus laudatur quando ratione probata. Lit. Epil.—(The law is the more praised, when it is consonant to reason.)

For Lord Coke declares, "that the law is unknown to him that knoweth not the reason thereof; and that the known certainty of the law is the safety of all." 1 Inst. Epil.

Lex prospicit, non respicit. Jenk. Cent. 284.—(The law looks forward, not backward.)

Lex punit mendacium. Jenk. Cent. 15.—(The law punishes a lie.)

Lex rejicit superflua, pugnantia, incongrua. Jenk. Cent. 133.—(The law rejects superfluous, contradictory, and incongruous things.)

Lex reprobat moram. Jenk. Cent. 35.—(The law dislikes delay.)

Lex scripta si cesserit id custodiri oportet quod moribus et consuetudine inductum est, et si qua in re hoc defecerit tunc id quod proximum et consequens ei est, et si id non appareat tunc jus quo urbs Romana utitur servari oportet. 7 Co. 19.—(If the written law be silent, that which is drawn from manners and custom ought to be observed; and if in that anything is defective, then that which is next and analagous to it; and if that does not appear, then that law which Rome used should be followed.)

Lex semper dabit remedium. (The law will always give a remedy.)

Lex semper intendit quod convenit rationi. Co. Lit. 78.—(The law always intends what is agreeable to reason.)

Lex spectat naturæ ordinem. Co. Lit. 197.—(The law regards the order of nature.)

Lex succurrit ignorant. Jenk. 15.—(The law assists the ignorant.)

Lex uno ore omnes alloquitur. 2 Inst. 184.—(The law speaks to all with the same mouth.)

LEX SCRIPTA, the statute law.

LEX SACRAMENTALIS, purgation by oath.

LEX TALIONIS, the law of retaliation.

The law of retaliation was common among all ancient nations, and was, in truth, the most efficacious means of protecting a person from injuries; but, in progress of time, when feelings and manners had assumed a milder tone, causes which originated from one person's receiving bodily injuries from another, were brought into the common civil courts on the footing of other causes, and the punishment to be inflicted upon the aggressor, or the satisfaction in any other way to be rendered to the injured party, was left entirely to the person who sat as Judge.

The arguments which have been used against the expediency and propriety of the *jus talionis*, are of no great weight. For instance, it has been said that this system of retaliation increased the number of injured and mutilated persons in the community, when, on the contrary, it probably

diminished it, as a person would naturally be cautious how he inflicted wounds on the body of another, when he was fully aware of what might be the consequences to himself. Another objection is, that it would be very difficult, or altogether impossible, to require upon the original aggressor just as much and no more than had been suffered by the injured party. But the answer is, if from any circumstances he should suffer more, all he has to do is to attribute it to himself, and to consider it as what he might naturally have expected. *Jahn's Bib. Antiq.*, p. ii. c. 3, § 256.

LEX TERRÆ, the law and custom of the land.

LEX WALLENSICA, the Welch law.

LEY, law; also, a meadow.

LEY GAGER, a wager of law; one who commences a lawsuit.

LEYERWITE, a fine formerly paid for adultery or fornication.

LIARD, a farthing.

LIBEL [*libellus*, Lat., *libelle*, Fr.], a satire; defamatory writing; a lampoon. All contumelious matter that tends to degrade a man in the opinion of his neighbours, or to make him ridiculous, will amount, when conveyed in writing, or by picture, effigy, or the like, to libel. The term also legally includes such writings as are of a blasphemous, treasonable, seditious, or immoral kind.

The author as well as the mere publisher of every written calumny that has been published is liable to an action, and is also punishable, although it do not impute any indictable offence, but merely tend to disgrace or ridicule, or bring into contempt the party calumniated, even by imputing hypocrisy or want of proper feeling, and still more if it impute fornication, swindling, or any other deviation from moral rectitude or principle; or even impute a person's rudeness to females; unless indeed it were written and published on a lawful occasion, as in *bonâ fide* giving a fair character to a servant, or in making a confidential communication, which is *primâ facie* legal, but proof of express malice will defeat that defence; or to a certain extent a correct report of a trial or proceeding in court, where both plaintiff and defendant may be supposed to have been present before the court, but not a report of an *ex parte* proceeding, or matter relating to a third person not before the court. 2 Russ. Chan. Rep. 607; 3 Barn. & Ald. 702. The 1 Wm. IV., c. 73, by requiring proprietors of newspapers to find sureties, affords some protection against libels therein. Sending a libel privately to a party libelled, as tending to excite him to a breach of the peace, is indictable; but without some publication to a third person, no action could be sustained. But the printing of a libel is of itself evidence of a publication, because the persons employed in printing and the compositor must be presumed to have read the same; and the sending a letter by post to a third person, and proof that the seal has been broken, and proof of defendant's handwriting, is

presumptive evidence of publication to the third person. Justification of a libel imputing felony must be established by some proof of the offence, as upon an indictment, but it is advisable to plead a justification. *Chit. Gen. Prac.*, vol. i. p. 43 a.

By 6 & 7 Vict., c. 96, for amending the law respecting defamatory words and libels, it is provided that in pleading to any indictment or information for a defamatory libel, the defendant may, by way of defence, allege the truth of the matters charged, and farther, that it was for the public benefit that the matters charged should be published, showing the particular fact or facts by reason whereof it was for the public benefit, and that if after such plea the defendant shall be convicted, it shall be competent to the court, in pronouncing sentence, to consider whether the guilt of the defendant is aggravated or mitigated by the plea and the evidence thereon. The same act also contains provisions intended to relieve editors and proprietors of newspapers, or other periodical publications, from the hardship to which they were subject under the former law, in being held liable absolutely, and without qualification, for all libels therein inserted, though inserted without their knowledge. These enactments are, first, that in an action for a libel of this description, it shall be competent to the defendant to plead that it was inserted without actual malice, and without gross negligence, and that before the commencement of the action, or at the earliest opportunity afterwards, he inserted in the same publication a full apology (or if the publication should be ordinarily published at intervals, exceeding a week, had offered to publish the apology in any newspaper or periodical publication, to be selected by the plaintiff), and the defendant shall, upon such plea, be at liberty to pay into court a sum of money, by way of amends, for the injury sustained. And as regards an indictment or information for such a libel, that it shall be competent to defendant to prove that the publication was without his authority, consent, or knowledge, and did not arise from want of due care and caution on his part. The statute further enacts, that in all indictments or informations for libel, if judgment be given for the defendant, he shall be entitled to costs for the prosecution; and if it be given against him, upon a special plea, he shall be liable to pay the prosecutor the costs occasioned by such plea; and, moreover, that every person convicted of maliciously publishing a defamatory libel, knowing the same to be false, shall be liable to imprisonment for a term not exceeding two years in the common gaol or house of correction, and to pay such fine as the court shall award, and to the like punishment, even where the aggravation of wilful falsehood shall not exist, but with reduction of the limit of imprisonment, in that case, to one year. The act, also, contains a provision which applies to every action for defamation,

whether oral or written, viz., that it shall be lawful for the defendant (after notice in writing of his intention so to do, duly given to the plaintiff at the time of pleading) to give in evidence, in mitigation of damages, that he made or offered an apology to the plaintiff before the commencement of the action, or as soon afterwards as he had an opportunity, in case the action had been commenced before an opportunity could be found.

By 8 & 9 Vict., c. 75, it is enacted, that if any person shall publish, or threaten to publish any libel, or directly or indirectly propose to abstain from printing or publishing, or offer to prevent the printing or publishing of any matter touching any person, with intent to extort any money, security for money, or valuable thing, from such person, or any other; or with intent to induce any person to confer or procure any appointment or office of profit or trust, he shall be liable to imprisonment, with or without hard labour, for a term not exceeding three years.

A law of the Twelve Tables inflicted very severe punishment on those who composed defamatory writings against any person. *Cic. de Re Pub.* iv. 10; *Arnob.* iv. 151. During the latter part of the republic, the law appears to have been suspended, for Tacitus (*Ann.* i. 72,) says, that previous to the time of Augustus, libels had never been legally punished, and that Augustus, provoked by the audacity with which Cassius Severus brought into disrepute the most illustrious persons of the age, ordained, by a *lex majestatis*, that the authors of *libelli famosi* should be brought to trial. On this occasion, Augustus, who was informed of the existence of several such works, had a search made at Rome by the Cædiles, and in other places by the local magistrates, and ordered the libels to be burned; some of the authors were subjected to punishment. *Dion. Cass.* lvi. 27. A law quoted by Ulpian (*Dig.* 47, tit. 10, § 5,) ordained, that the author of a *libellus famosus* should be *intestabilis*; and during the latter period of the empire we find that capital punishment was not only inflicted upon the author, but upon those persons in whose possession a *libellus famosus* was found, or who did not destroy it as soon as it came into their hands. *Cod.* ix. tit. 36. *Smith's Dict. of Antiq.*

In the *spiritual* court a libel is the declaration or written charges on the plaintiff's parts, in the civil litigation. It consists of three parts: 1. The major proposition, which shows a just cause of the petition. 2. The narration, or minor proposition. 3. The conclusion or conclusive petition, which conjoins both propositions.

In the Scotch law it is the source of complaint or ground of the charge, on which either a civil action or criminal prosecution takes place.

LIBELLI FAMOSI, scurrilous pamphlets or libels.

LIBER JUDICIALIS OF ALFRED, Alfred's dome-book; which see.

LIBER NIGER DOMUS REGIS (the black book of the King's household), the title of a book in which there is an account of the household establishment of King Edward IV., and of the several musicians retained in his service, as well for his private amusement as for the service in his chapel. *Encyc. Lond.*

LIBER TAURUS, a free bull. *Norf., 16 Edw. I.*

LIBERA, a livery or delivery of so much corn or grass to a customary tenant, who cut down or prepared the said grass or corn, and received some part or small portion of it as a reward or gratuity. *Cowell.*

LIBERA BATELLA, a free boat, a right of fishing.

LIBERA CHASEA HABENDA, a judicial writ granted to a person for a free chase belonging to his manor, after proof made by inquiry of a jury that the same of right belongs to him.

LIBERAM LEGEM, to lose one's free law (called the villanous judgment), to become discredited or disabled as juror and witness, to forfeit goods and chattels and lands for life, to have those lands wasted, houses razed, trees rooted up, and one's body committed to prison. It was anciently pronounced against conspirators, but now disused, the punishment substituted being fine and imprisonment. *Hawk. P. C., 61, c. 72, § 9.*

LIBERA PISCARIA, a free fishery.

LIBERA WARA, a free measure of ground.

Liberata pecunia non liberat offerentem. Co. Lit. 207.—(Money being restored, does not set free the party offering.)

LIBERATE, a writ that lay for the payment of a yearly pension or other sum of money, granted under the Great Seal, and addressed to the treasurer and chamberlain of the Exchequer. Also a writ to the sheriff for the delivery of possession of lands and goods extended or taken upon the forfeiture of a recognizance. Also a writ issuing out of Chancery, directed to a gaoler, for delivery of a prisoner that has put in bail for his appearance. *F. N. B. 432.*

LIBERATIO, money, meat, drink, clothes, &c., yearly given and delivered by the lord to his domestic servants. *Blount.*

LIBERTAS ECCLESIASTICA, church liberty, or ecclesiastical immunity.

Libertas est naturalis facultas ejus quid cuique facere libet, nisi quod de jure aut vi prohibetur. Co. Lit. 116.—(Liberty is that rational faculty which permits every one to do anything but that which is restrained by law or force.)

Libertas est res inestimabilis. Jenk. Cent. 52.—(Liberty is an inestimable thing.)

LIBERTATE PROBANDA, an ancient writ which lay for such as being demanded for villeins, offered to prove themselves free; addressed to the sheriff that he should take security from them for the proof of their freedom before the justices of assize, and that in the mean time they should be unmolested. *F. N. B. 77.*

LIBERTATIBUS ALLOCANDIS, a writ lying for a citizen or burgess, impleaded contrary to his liberty, to have his privilege allowed. *Reg. Orig. 262.*

LIBERTATIBUS EXIGENDIS IN ITINERE, an ancient writ whereby the king commanded the justices in eyre to admit of an attorney for the defence of another's liberty. *Reg. Orig. 19.*

Libertates regales ad coronam spectantes ex concessione regum a coronam exierunt. 2 Inst. 496.—(Royal prerogatives relating to the Crown, depart from the Crown by the consent of the kings.)

Libertinum ingratum leges civiles in pristinum servitutem redigant; sed leges Angliæ semel manumissum semper liberum judicant. Co. Lit. 137.—(The civil laws reduce an ungrateful freedman to his original slavery, but the laws of England regard a man once manumitted as ever after free.)

LIBERTY, a franchise, being a royal privilege, or a branch of the Crown's prerogative, subsisting in the hands of a subject, as a liberty to hold pleas in a court of one's own.

Also, generally, a state of freedom, as contradistinguished from slavery. It is of various kinds.

1. Natural liberty—a state of exemption from the controul of others, and from positive laws and institutions of social life.

2. Civil liberty—the security from the arbitrary will of others, which is afforded by the laws.

3. Political liberty—a more extended civil liberty, being the freedom of a nation or a state from all unjust abridgment of its rights and independence by another nation.

4. Religious liberty, or liberty of conscience—the free right of adopting and enjoying opinions on religious subjects, and of being allowed to worship the Supreme Being according to the dictates of conscience, unfettered by external controul.

5. Liberty of the press—the free power of publishing everything, subject, however, to punishment for publishing what is mischievous to the public morals, or injurious to individuals.

LIBERUM TENEMENTUM, a frank tenement or freehold.

LIBLAC [*nerescium*], witchcraft, particularly that kind which consisted in the compounding and administering of drugs and philtres. Wieland, in *Oberon*, says:

“*Der Ritter steigt herab, und ungesäumt erscheint,*

Gans in verlupptem Stahl, sein trotzig sichrer Ferid.” *Anc. Inst. Engl.*

LIBRACUM, bewitching any person; also a barbarous sacrifice. *Leg. Athel. 6.*

LIBRA PENSA, a pound of money by weight.

It was usual, in former days, not only to sell the money, but to weigh it; because many cities, lords, and bishops, having their mints, coined money, and often very bad too, for which reason, though the pound consisted of 20 shillings, they weighed it. *Encyc. Lond.*

LIBRATA TERRÆ, a portion of ground containing four oxgangs, and every oxgang fourteen acres.

This is the same with what in Scotland is called *pound-land* of old extent.

LICENSE, or **LICENCE** [*licentia*, Lat.], a grant of permission, a power or authority given to another to do some lawful act. It may be either written or verbal; when written, the paper containing the authority is called a licence.

A licence is necessary before doing many acts, as to a corporation to alien, to found a church, to erect a park, to marry without publishing banns, &c.; also to carry on various trades, and to practise any profession.

LICENTIATE, one who has licence to practise any act or faculty.

LICENTIA CONCORDANDI, license to pay the king's silver on passing a fine.

LICENTIA LOQUENDI, an imparlance.

LICENTIA SURGENDI, license to arise, which was a liberty or space of time anciently given by the court to a tenant to arise out of his bed, who was essoined *de malo lecti* in a real action; and it was also the writ thereupon. *Fleta*, l. 6, c. 10.

LICENTIA TRANSFRETANDI, a writ or warrant directed to the keeper of the port of Dover, or other seaport, commanding them to let such persons pass over sea who have obtained the royal license thereunto. *Reg. Orig.* 193.

Licet dispositio de interesse futuro sit inutilis, tamen potest fieri declaratio præcedens quæ sortiatur effectum, interveniente novo actu. Bacon.—(Although a disposition of a future interest is void, yet a precedent declaration can be made which, a new act intervening, may chance to have an effect.)

Licita bene miscentur, formula nisi juris obstet. Bacon.—(Things permitted should be well contrived, lest the form of law oppose.)

LICITATION [*liceo*, Lat., to set a price for sale]. The act of exposing to sale to the highest bidder. *Encyc. Lond.*

LICKING OF THUMBS, a form by which bargains were completed. *Obsolete.*

LIDFORD LAW, a sort of Linch law, where a person was first punished, and then tried.

LIEGE [*lige*, Fr., *ligio*, Ital.], bound by some feudal tenure; subject.

LIEGE HOMAGE, a proceeding which included fealty and the services consequent upon it. *2 Step. Com.* 421.

LIEGE-LORD, sovereign; superior lord.

LIEGEMAN, a subject.

LIEGER or **LEGER**, a resident ambassador.

LIEGE POUSTIE, a state of health which gives a person lawful power of disposition by will.

LIEGES, or **LIEGE PEOPLE**. See **LIEGE**.

LIEN, a right in one man to retain that which is in his possession belonging to another, until certain demands of him, the person in possession, are satisfied. It is neither a *jus in re*, nor a *jus ad rem*, i. e., it is not a right of property in the thing itself, or a right of action to the thing itself.

It is either *particular*, as a right to retain a thing for some charge or claim growing out of, or connected with, the identical thing, or *general*, as a right to retain a thing not only for charges and claims specifically of, or connected with, the identical thing; but also for a general balance of accounts between the parties, in respect to other dealings of the like nature.

Particular liens may arise in various ways: (1), by an express contract; (2), by an implied contract, resulting from the usage of trade, or the manner of dealing between parties; (3), by mere operation of law, from the relation and acts of the parties, independently of any contract. General liens, not being favoured in law, must be maintained upon one of the two first grounds.

The civil law derived its own liens, whether they were pledges, or hypothecations, or simple privileges, from similar sources.

The following is an analysis of the mode in which the law on this subject has been treated.

1. As to the manner and circumstances under which a lien may be acquired.

To create a valid lien, it is essential that the party through whom or by whom it is acquired, should himself either have the absolute ownership of the property, or, at least, a right to vest it; for, *nemo plus juris ad alium transferre potest, quam ipse habet*. There must also be an actual or constructive possession by the party asserting it, with the express or implied assent of the party against whom it is asserted. It must not be inconsistent with the express terms, or the clear intent, of the contract.

2. The proper debts or claims to which a lien properly attaches.

It attaches only to certain and liquidated demands, and not to those which sound only in damages, and can be ascertained only through the intervention of a jury, unless, indeed, a special contract exists. The debt or demand for which the lien is asserted, must be due to the party claiming it in his own right, and not merely as the agent of a third person. It must also be a debt or demand due from the very person for whose benefit the party is acting, and not from a third person, although the goods may be claimed through him, that is, of course, in the absence of a special agreement.

3. How a lien may be waived or lost.

It may be waived by any act or agreement between the parties, by which it is surrendered, or becomes inapplicable. A voluntary parting with the possession of the goods, will amount to a waiver or surrender of a lien; for, as it is a right founded upon possession, it must ordinarily determine, when the possession ceases. There are exceptions in favour of trade, as that of a factor. *Corp. R.* 251. But the lien may revive and re-attach, upon the property coming again into the possession of the party entitled to the lien, if it so come as the property of the same owner against whom his right exists,

and no new intermediate equities have affected that right.

4. In what manner a lien may be enforced.

There is, it seems, but a mere right of retainer, which may be used as a defence in any action for the recovery of the property, or as a matter of title or special property, to reclaim the property by action, if he have been unlawfully dispossessed of it. Sometimes a court of equity decrees a sale as a part of its own system of remedial justice; and courts of admiralty are constantly in the habit of decreeing a sale to satisfy maritime liens, such as bottomry bonds, seamen's wages, repairs of foreign ships, salvage, and other claims of a kindred nature. The owner has a perfect right to dispose of the property, subject to the lien, and the party to whom he conveys it will have a perfect title to it, upon discharging the lien. Consult *Paley on Agency*.

In the Scottish law, the doctrine of lien is known by the name of *retention*, and that of set-off by the name of *compensation*.

LIEU, place, room; it is only used with *in*; *in lieu*, instead of. *Encyc. Lond.*

LIEU CONUS, a castle, manor, or other notorious place, well known, and generally taken notice of by those who dwell about it. *2 Lit. Abr.* 641.

LIEUTENANT [*lieu*, Fr., a place, and *tenant*, holding], a deputy; *locum tenens*, one who acts by vicarious authority.

LIFE [*lyfian*, Sax., to live], the animated state of living creatures, or the space of time that passes between their birth and their death.

LIFE-ANNUITY, an annual income, the payments of which depend on the continuance of any given life or lives. See ANNUITY.

LIFE-ASSURANCE, a transaction whereby a sum of money is secured to be paid upon the death of the person whose life is assured, or upon the failure of one out of two or more joint-lives. See INSURANCE.

LIFE-ESTATE, a freehold not of inheritance. It is either—

(1), *Conventional*, or expressly created by the act of the parties, which is either—

(a) For one's own life, or

(b) The life of another, *pur autre vie*, or

(2), *Legal*, which is either—

(a) Tenancy in tail after possibility of issue extinct.

(b) Courtesy of England.

(c) Dower. *2 Bl. Com.*, c. viii.

LIFE-LAND, or LIFE-HOLD, land held on a lease for lives.

LIFE-RENT, a rent paid for a term of life.

LIGAN [*lier*, Fr., to tie], a wreck, consisting of goods sunk in the sea, but tied to a cork or buoy, in order to be found again. *5 Rep.* 106.

LIGEANCE, the true and faithful obedience of a subject to his sovereign; also, the dominion and territory of a liege lord.

Ligeantia est quasi legis essentia; est vinculum fidei. Co. Lit. 129.—(Allegiance is, as it were, the essence of law; it is the chain of faith.)

Ligeantia naturalis, nullis claustris coercetur, nullis metis refrænatur, nullis finibus premi-tur. 7 Co. 10.—(Natural allegiance is restrained by no barriers, reined by no bounds, compressed by no limits.)

LIGEAS, a liege. *Old Records*.

LIGHT, a right to have the access of the sun's rays to one's windows free from any obstruction. An uninterrupted enjoyment of light for twenty years constitutes, in every case, an absolute and indefeasible right to it, unless it shall appear that the enjoyment took place under some deed or written consent or agreement. *2 Wm. IV.*, c. 71.

LIGHT-HOUSE, a high building, at the top of which lights are hung to guide ships at sea. The power of erecting and maintaining them is a branch of the royal prerogative, which is specially committed to the Trinity House Corporation. *8 Eliz.*, c. 13; *6 Geo. IV.*, c. 125; *6 & 7 Wm. IV.*, c. 79; *1 & 2 Vict.*, c. 66.

The light-houses on the coast of Scotland are under the control of the "Commissioners of Northern Lights," appointed by *26 Geo. III.*, c. 101. Those on the coast of Ireland under that of the "Corporation for improving and preserving the port of Dublin." *52 Geo. III.*, c. 115; *6 & 7 Wm. IV.*, c. 117.

LIGHTING AND WATCHING ACTS, *11 Geo. IV.*, c. 27; *3 & 4 Wm. IV.*, c. 90.

LIGIUS, a person bound to another by a solemn tie or engagement; now used to express the relation of a subject to his sovereign.

LIGNAGIUM, a right of cutting fuel in woods; also a tribute or payment due for the same.

LIGNAMINA, timber fit for building.

LIGULA, a copy or transcript of a court-roll or deed.

LIGURITOR, a flatterer; perhaps, a glutton. *Somner*.

LIMITATION, restriction or circumspection; a certain time allowed by a statute for litigation.

It is very essential, previous to litigation, to be satisfied whether the remedy about to be taken has or has not become barred by any Statute of Limitation or by legal presumption.

Statutes of Limitation have been elegantly denominated *Statutes of repose*, and being all *in pari materia*, and passed with the same object, they should be liberally and beneficially expounded in furtherance of that object. *White v. Parnter*, Knapp's Rep. 226.

The principal reasons for the introduction of these statutes have been *first*, as regards *real property*, after upwards of sixty years adverse possession, or even a shorter time, a person should, upon every principle of justice, and *with the exception of fraud*, be quieted and rendered secure in his possession; for, although his right, if tried within a reasonable time after his obtaining possession, might have been proved by documents and evidence, such evidence, after so great a

lapse of time, may have become altogether lost; besides, a new succession of persons may have become the occupiers, by descent, or devise, or by alienation, and it would be unjust to require them to prove their title, impeached by a claimant, who has slept so long on his legal rights, and who would sustain no just disappointment, by being deprived of the means of pursuing so stale a demand. See *White v. Parther*, Knapp's Reports, 227. *Second*, as regards claims of a *personal* nature, as for supposed *debts* or *damages*, the lapse of six years induces a presumption (upon which 21 Jac. I., c. 16, was passed) that the claim has been satisfied, and that the receipt or evidence, showing its satisfaction, has been lost; or that the claim has been too weak to prosecute, or perhaps not worth it. *Third*, as to *assaults* and *batteries*, and *verbal slander*, proofs of which usually depend upon doubtful and conflicting parol evidence; injured parties slumbering upon such wrongs for years cannot be favoured objects of the Courts, since length of time tends to obliterate the injurious effects arising from such evanescent causes: and *Fourth*, as to *justices*, *public officers*, and *individuals* acting under particular powers, inasmuch as their duties are arduous and sometimes perilous, and the construction of the statutes under which they act, is frequently exceedingly nice and difficult, they should be more particularly protected from actions arising from errors in judgment, being long kept hanging over their heads, until, perhaps, all evidence in support of their defence may have been lost. The 5 & 6 Vict., c. 97, makes uniform the limitations in regard to these functionaries, enacting (§ 5) that in all actions brought for any thing done in pursuance of any local or personal act, the period for bringing such action shall be limited to two years, or in case of continuing damage, to one year after such damage shall have ceased. It repeals all enactments to the contrary. And the 4th § provides that in all cases where a notice of action is required, it shall be given one calendar month before action.

If the statute once begin to run, it continues; and, if the cause of action were complete in a testator's lifetime, then the statute begins and continues from that time, and not from his death, or the time of obtaining the probate. *Hickman v. Walker*, Willes, 27.

It seems, by recent decisions, that the day on which the cause of action accrued, ought in general to be *excluded* in calculating the times of limitations under these statutes. *Higgins v. Mc Adam*, 3 Young & J., 1 & 16; 1 Mon. & R. 300, note (b). And as to the *expiration* (the statutes requiring the action to be brought within the limited time), the writ, or process, at least, should be issued upon the *last day* of the time limited, exclusive of the day on which cause of action accrued.

There is no *cause of action* till the claimant could *legally sue*, and also that there be *some person* in existence, who could assert

it, and also a person to be *sued*; and therefore, where the payee of a bill, at the time it fell due, was dead, it was held that the statute did not begin to run, until letters of administration had been obtained by some one, *Douglas v. Forrest*, 4 Bing. 686; but as regards *chattels real*, process for their recovery must be commenced within the limited time absolutely, without regard to the date of the letters of administration; and in cases of the reversal of judgment or outlawry in any *personal action*, the plaintiff, or his heirs, executors, or administrators, may commence *de novo* within a year afterwards, but not after; and also as to actions against persons beyond sea, they may be brought at any time within six years after their return.

No *verbal* acknowledgment of a debt (excepting it has been so substantial an admission as a *part payment*) is sufficient to prevent the operation of the statutes, *Bennet v. Pipon*, Knapp's Rep. 60. A written acknowledgment, explicitly admitting a continuing debt, must be signed by the *party himself*, and not by an agent, to take the case out of the statute, *Whippy v. Hillary*, 3 Bar. & Adol. 507; and where such a written acknowledgment has been lost, then, on proof of its having existed, and diligent search and loss, parol evidence of its contents are admissible. *Hudon v. Williams*, 7 Bing. 178.

Persons, at the time their right first accrued, under disability of infancy, coverture, idiotcy, lunacy, unsoundness of mind, imprisonment, or absence beyond seas, and their representatives, shall be allowed ten years from the termination of their disability, or their death. 3 & 4 W. IV., c. 27, § 16, relating to *real* property.

As to the determination of infancy. A person becomes of age on the first instant of the last day of the 21st year, *next before* the anniversary of his birth; thus, if a person be born at any hour of the 1st January, 1801, he would be of full age at the first instant of the 31st December, 1821.

The following places are not beyond seas, within the meaning of 21 Jac. I., c. 16, and the subsequent statutes: no part of the United Kingdom of Great Britain and Ireland, nor the Isles of Man, Guernsey, Jersey, Alderney, or Sark, nor any islands adjacent to any of them, being part of the dominions of her Majesty. Ireland is still to be considered a place beyond the seas, within the meaning of the 4 Anne, c. 16, § 19, notwithstanding the subsequent Act of Union, and the 3 & 4 W. IV., c. 42, § 7.

There are four general rules, when the possession is not *adverse*, viz.:—1st, when both parties claim under the *same* title; 2ndly, when the *possession* of the one is *consistent* with the *title* of the other; 3dly, when the claimant or his successor has never, in contemplation of law, been out of possession; and, 4thly, when the occupier has acknowledged the plaintiff's title.

An action of trover must be brought within

six years after a *secret conversion*, although unknown to the owner of the goods. *Granger v. George*, 5 Bar. & Cres. 149; 7 Dowl. & Ry., 729, S. C.

It would not excuse an attorney for not suing within six years, to show that he had not delivered his bill till within that time, although he is prohibited from suing until a calendar month after such delivery; and his cause of action, with respect to his bill, begins from the *completion* of the business. *Harris v. Osbourn*, 2 Cr. & M. 629; 4 Tyr. 445.

The statute must in general be pleaded; but under circumstances, the jury may, after twenty years, presume payment under the general issue.

In courts of equity, the general rule is, that, although the statute 21 Jac. I., c. 16, § 3, and other acts, do not mention bills or suits in equity, yet, that courts of equity, in giving effect to equitable claims, and affording equitable relief, will observe the principles of these enactments, in all cases where the legal and equitable titles to demands, noticed in the acts, correspond and differ only in the court where the right happens to be enforced, *Stackhouse v. Burnston*, 10 Ves. 66, 67. But the 3 & 4 W. IV., c. 27, expressly enacts, that no suit in equity shall be brought after the time, when the plaintiff,

if entitled at law, might have brought an action (§ 24). Section 25 provides, that where land or rent shall be vested in a trustee, upon an express trust, the right of the *cestui que trust*, or person claiming through him, shall not be deemed to have accrued, until after a conveyance to a purchaser for a valuable consideration. Section 26 provides, that, in cases of concealed fraud, no time shall run, until the fraud shall have been, or with reasonable diligence might have been, first discovered; provided that no owner shall sue in equity on account of fraud, or set aside a *bond fide* conveyance to a purchaser for valuable consideration. Section 29 continues the jurisdiction of equity, in refusing relief on the ground of acquiescence, or otherwise.

If there be a general devise for the payment of debts, it will be no recognition or revival of debts, already barred by the statute, *before* the death of the testator, although it was formerly held otherwise, *Stratford v. Blakesley*, 6 Bro. P. C. 630; but such a devise stops the operation of the statute, as to all debts *not so previously barred*. *Rendell v. Carpenter*, 2 Young & P. 484.

No advantage can be taken of the statutes of limitation in equity, unless they be *pleaded* or insisted upon by the answer.

The following is an alphabetical arrangement of the Statutes of Limitation :—

PROCEEDING.	PERIOD.	STATUTE.
Account, action of	6 years	21 Jac. 1, c. 16, § 3.
Administrator. See EXECUTOR.		
Admiralty, suits for seamen's wages	6 years	4 Anne, c. 16, § 17.
Advowson, recovery of	Not after 3 incumbencies, occupying a period of 60 years adverse possession; incumbencies, after lapse, but not after promotion to bishopricks, are reckoned; and 100 years' adverse possession is a complete bar, although 3 incumbencies have not elapsed	3 & 4 W. 4, c. 27, §§ 30, 31, & 33.
Annuity, action of	20 years	3 & 4 W. 4, c. 42, §§ 3 to 7.
Army, navy, and marine officers, &c., actions against	2 years, or 1 year after determination of continuing damage	5 & 6 Vict., c. 97, § 5.
Assault, battery, and false imprisonment	4 years	21 Jac. 1, c. 16, § 3.
Assignees, and other persons in bankruptcy, actions against, <i>for acts done in pursuance of</i> 6 Geo. IV., c. 16. N.B. This does not apply to an action of trover against assignees for seizing a chariot on the bankrupt's premises, <i>Carruthers v. Payne</i> , 2 Moo. & P. 429; nor to an action against them, for entering the house of a third party, to seize bankrupt's goods;		

PROCEEDING.	PERIOD.	STATUTE.
that not being an act done " <i>in pursuance of the statute</i> ," <i>Edge v. Parker</i> , 8 B. & C. 697; nor to an action of trespass, by the bankrupt, against the official assignee, to try the fiat's validity, <i>Knight v. Turquand</i> , 2 M. & W. 101; nor to actions brought against assignees, or other persons acting under their authority, <i>Worth v. Budd</i> , 1 Dow. 328; 2 B. & Adol. 172.		
Assumpsit, action of	2 years	5 & 6 Vict., c. 97, § 5.
Award, motion to set aside	6 years	21 Jac. 1, c. 16, § 3.
	Before the last day of the next term after publication, provided the submission is by rule of court or Judge's order, or the submission contains a clause that it shall be made a rule of court, or the reference is made at <i>Nisi Prius</i> of the cause, and other matters in difference. But where a verdict is taken at <i>Nisi Prius</i> , and the cause only is referred, then within first four days of the term next after publication of award	9 & 10 W. 3, c. 15, § 2.
— action of debt upon, where the submission was not by specialty	6 years	3 & 4 W. 4, c. 42, §§ 3 to 7.
— but if on specialty	20 years	<i>Ibid.</i>
Bankrupt to shew cause against adjudication	Within five days after service of copy, giving two days notice of his intention	5 & 6 Vict., c. 122, § 23; Gen. Rules, Nov. 12, 1842.
— to contest the validity of the fiat by an action, &c.	If within the United Kingdom at the date of adjudication, within twenty-one days, if in any other part of Europe, within three months, or if elsewhere, within twelve months advertisement in Gazette	5 & 6 Vict., c. 22, § 24.
Bills for specific performance	To be instituted promptly, and without slumbering on the right	1 Madd. Ch. Pr. 415.
Bond or specialty	20 years	3 & 4 W. 4, c. 42, § 3.
Building act	2 years and 1 year after end of continuing damage	5 & 6 Vict., c. 97, § 5.
Case (except for words actionable in themselves)	6 years	21 Jac. 1, c. 16, § 3.
Commissioners of West India and London Dock Companies, &c., actions against	2 years and 1 year after end of continuing damage	5 & 6 Vict., c. 97, § 5.
Commissioners Brighton Act, &c.	The same	The same.
Common and other profits <i>à prendre</i> , claims to	They cannot be defeated, after 30 years' enjoyment, by showing their <i>first</i> enjoyment at any prior	2 & 3 W. 4, c. 71.

PROCEEDING.	PERIOD.	STATUTE.
	period. 60 years' enjoyment an absolute and indefeasible right, unless under express agreement	
Company, Commercial Dock, &c.	2 years and 1 year after end of continuing damage	5 & 6 Vict., c. 97, § 5.
Constables and others acting in obedience to a warrant, demand in writing of the perusal and copy of such warrant	6 days before action	7 & 8 Geo. 4, c. 29.
Copyhold fine	6 years	3 & 4 W. 4, c. 42.
Covenant, action of. See "BOND."	20 years	3 & 4 W. 4, c. 42, § 3.
Criminal Conversation	6 years	21 Jac. 1, c. 16, § 3.
— information against magistrates	In the <i>first term</i> after, though where no assizes intervene, in the <i>second term</i> , provided there be time to show cause against it in the same term	Tidd, 498; <i>Res v. Smith</i> , 7 T. R. 30.
Crown, the, suits relating to land	Sixty years next before suit or claim	9 Geo. 3, c. 16.
Customs and excise officers, &c., actions against	2 years and 1 year after determination of continuing damage	5 & 6 Vict., c. 97, § 5.
Debauching daughters, &c.	6 years	21 Jac. 1, c. 16, § 3.
Debt (if not on specialty)	6 years	<i>Ibid.</i>
— on specialty. See "BOND."	20 years	3 & 4 W. 4, c. 42, § 3.
— <i>qui tam</i> . See "PENAL STATUTES."		
Deed. See "BOND."	20 years	3 & 4 W. 4, c. 42, § 3.
Detinue	6 years	21 Jac. 1, c. 16, § 3.
Distress for rents existing as an inheritance, distinct from the land, and for which an assize might formerly have been had	20 years	3 & 4 W. 4, c. 27, § 2.
— for all other rents	6 years	<i>Ibid.</i> , § 42.
Dock Acts. See "COMMISSIONERS," &c., "COMPANY," &c.		
Dower	No arrears or damages on account thereof can be recovered for more than 6 years	3 & 4 W. 4, c. 27, § 41.
Ecclesiastical Courts:—		
Suits for verbal defamations	6 calendar months	27 Geo., 3. c. 44.
For incontinence, brawling, or striking in church, fornication, &c.	8 calendar months	<i>Ibid.</i>
Ejectment	20 years	21 Jac. 1, c. 16, § 1.
Error, writ of	20 years	10 & 11 W. 3, c. 14; T. 1141.
Escape, action for	6 years	3 & 4 W. 4, c. 42.
Excise officers, action against	2 years and 1 year after end of continuing damage	5 & 6 Vict., c. 97, § 5.
Executors or administrators	If time have not expired before testator's or intestate's death, then within a year after his death	Bull. N. P. 150.
Injuries to testator or intestate's real estate	If injury committed 6 months before his death, then within a year after his death	3 & 4 W. 4, c. 42, § 2.
Actions of tort against executor or administrator, for wrong done by tes-	If done within 6 months of his death, then with-	<i>Ibid.</i>

PROCEEDING.	PERIOD.	STATUTE.
tator or intestate, to real or personal property of others	in 6 calendar months after entering upon office, provided the damages rank as simple contract debts	
False Imprisonment. See "ASSAULT."	4 years	21 Jac. 1, c. 16, § 3.
Fi. Fa., money levied on any writ of, action for	6 years	3 & 4 W. 4, c. 42, §§ 3 to 7.
Franchises, claims to	They shall not be defeated after 30 years' uninterrupted enjoyment, by showing benefits first enjoyed previous to such period; 60 years' enjoyment an absolute and indefeasible right, unless under express agreement by deed or writing	2 & 3 W. 4, c. 71, § 1.
Fraud, discovery of	No length of time will prevent, unless there have been laches for 6 years after discovery	2 Eden, 285.
Game, proceedings for penalties	2 years and 1 year after determination of continuing damage	5 & 6 Vict., c. 97, § 5.
— actions against officers, &c.	<i>Ibid.</i>	<i>Ibid.</i>
Gaming, action to recover money lost at	<i>Ibid.</i>	<i>Ibid.</i>
Highway Act	<i>Ibid.</i>	<i>Ibid.</i>
Hundred	<i>Ibid.</i>	<i>Ibid.</i>
— giving information to magistrate as to damages being above 30l.	7 days	7 & 8 Geo. 4, c. 31, § 3.
Judgment	No limitation but presumption after 20 years	
Justices, constables, &c., actions against	2 years and 1 year after end of continuing damage	5 & 6 Vict., c. 97, § 5. <i>Cock v. Gent</i> , 12 Mee. & W. 234; 10 Jur. 695.
Land, right of entry for the recovery of	No descent cast or discontinuance after 31st Dec., 1833, shall defeat it	3 & 4 W. 4, c. 27, § 39.
Larceny Act, actions for illegal apprehensions, &c.	2 years and 1 year after end of continuing damage	5 & 6 Vict., c. 97, § 5.
Legacies	20 years	2 Mad. Ch. Pr. 5, and 3 & 4 W. 4, cc. 27 & 42.
Libels	6 years	21 Jac. 1, c. 16, § 3.
Malicious injuries, actions for illegal apprehensions, &c.	2 years, and one year after end of continuing damage	5 & 6 Vict., c. 97, § 5.
Mandamus	Not after many years delay	<i>Re v. the Commissioners of Cockermouth</i> ; Inclosure Act; 1 Bar. & Adol. 378.
Members of Parliament, petitions against return of (Great Britain)	" Within 14 days next, and so within 14 days next after any new return should be brought in"	Journals, 23d Novem. 1832, Feb. 5, 1839.
— (Ireland)	<i>Ut supra</i> , or within the same time, lodging petition in the office	<i>Ibid.</i> N. B. If time expire during recess, peti-

PROCEEDING.	PERIOD.	STATUTE.
	of the clerk of the Crown in Ireland .	tions will be received on the first day of its next sitting. 1 Peck. 28, introd. Words. 289.
Merchants' accounts	An item within the 6 years takes the whole account out of the statute	6 T. R. 89.
Metropolitan Police Act, actions against persons acting under	2 years, and 1 year after determination of continuing damage	5 & 6 Vict., c. 97, § 5.
——— actions against persons acting under 3 & 4 Vict., c. 71	<i>Ibid.</i>	<i>Ibid.</i>
<i>Modus decimandi</i>	Its payment for 30 years next before, must be proved	2 & 3 W. 4, c. 100.
Mortgage, redeeming the estate	20 years from mortgagee taking possession, or from the last written acknowledgment	3 & 4 W. 4, c. 27, § 28.
Mortgagee, actions or suits to recover mortgaged lands by	Within 20 years next after the last payment of any part of the principal money or interest	3 & 4 W. 4, c. 27, § 1, interpreted by 1 Vic., c. 28.
Murder	Within a year and a day after the act, the person must die	4 Step. Com. 375.
Penal statutes by common informer	2 years, and 1 year after end of continuing damage	5 & 6 Vict., c. 97, § 5.
——— by the Queen	2 years	31 Eliz., c. 5.
Persons killed by accidents caused by wrongful act, neglect, or default, which would have entitled them to have brought actions if death had not ensued; one action may be brought for the benefit of the wife, husband, parent, or child, by the executor or administrator of the deceased	12 calendar months after their death	9 & 10 Vict., c. 93.
Prescription	30 years, &c., &c.	2 & 3 W. 4, c. 71.
Quare impedit or other action or suit to recover any advowson	Within three incumencies or 60 years, but indefeasible after 100 years from time of adverse possession, or that of the person through whom he claims	3 & 4 W. 4, c. 27, § 30.
Qui tam. See PENAL STATUTES, <i>supra</i> .		
Quit rent, action of debt for	6 years	21 Jac. 1, c. 16, § 3.
Real property, actions and suits relating to	20 years after right accrued	3 & 4 W. 4, c. 27.
Recognizances, proceedings upon	20 years	3 & 4 W. 4, c. 42.
Rent charge, proceeding for, though secured by deed	<i>Ibid.</i>	<i>Ibid.</i>
Replevin	6 years	21 Jac. 1, c. 16, § 3.
Scire facias on a recognizance	20 years	3 & 4 W. 4, c. 42, §§ 3 to 7.
Seamen's wages	6 years	4 Anne, c. 16, § 17.
Servant, debauching	6 years	21 Jac. 1, c. 16, § 3.
Slander, verbal (unless special damage)	2 years	<i>Ibid.</i>
Stock jobbing, action to recover back difference paid	2 years, and 1 year after end of continuing damage	5 & 6 Vict., c. 97, § 5.
Suits in equity	Not after time when	3 & 4 W. 4, c. 27, §§

PROCEEDING.	PERIOD.	STATUTE.
	plaintiff, if entitled at law, might have brought an action	24, 25, 26, 27.
Taxes, actions against officers	2 years, and 1 year after end of continuing damage	5 & 6 Vict., c. 97, § 5.
Tithes, exemption or discharge of, by composition, real or otherwise	Shewing the enjoyment of the land for 30 years next before demand, without payment of tithes, except as therein mentioned	2 & 3 W. 4, c. 100, §§ 1 & 2.
——, not setting out, or suits for	6 years	53 Geo. 3, c. 127, § 5.
Treason, prosecution for, unless against the Queen's life	3 years	7 W. 3, c. 3, §§ 5 & 6.
Trespass (except assault, battery, wounding, or false imprisonment)	6 years	21 Jac. 1, c. 16, § 3.
Trespass for mesne profits	6 years' arrears	Bull. N. P. 88.
Trover	6 years	<i>Ibid.</i>
Turnpike Act	2 years, and 1 year after end of continuing damage	5 & 6 Vict., c. 97, § 5.
Vagrant Act	<i>Ibid.</i>	<i>Ibid.</i>
Words. See SLANDER.	2 years	21 Jac. 1, c. 16, § 3.
Wounding. See ASSAULT.	4 years	<i>Ibid.</i>
Wages, seamen. See ADMIRALTY.	6 years	4 Anne, c. 16, § 3.
Way, right of	It shall not be defeated after 20 years' uninterrupted enjoyment, by shewing its first enjoyment prior to such period. 40 years' enjoyment an absolute and indefeasible right, unless under an express agreement, by deed or writing	2 & 3 W. 4, c. 71, § 2.

The 2 Will. IV., c. 39, § 10, enacts, that every writ of summons and *capias* may be continued by *alias* and *pluries*, as the case may require, if any defendant therein named may not have been arrested thereon or served therewith, provided that no first writ shall be available to prevent the operation of any statute, whereby the time for the commencement of the action may be limited, unless the defendant shall be arrested thereon or served therewith, or proceedings to or towards outlawry shall be had thereupon, or unless such writ and every writ (if any) issued in continuation of a preceding writ shall be returned *non est inventus* and entered of record within one calendar month next after the expiration thereof, including the day of such expiration; and unless every writ issued in continuation of a preceding writ shall be issued within one such calendar month after the expiration of the preceding writ, and shall contain a memorandum indorsed thereon or subscribed thereto, specifying the day of the date of the first writ; such return to be made, in bailable process, by the sheriff or other officer to whom the writ shall be directed, or his successor in office, and in process not bailable, by the

plaintiff or his attorney suing out the same as the case may be.

As to the effect of proceedings in equity in preventing the statute from running against claims enforced or enforceable only in equity, see 1 *Vern.* 73; 1 *Y. & Col.* 434. **LIMITATION OF ESTATE**, a modification or settlement of an estate, determining how long it shall continue, or a qualification of a preceding estate. 1 *Inst.* 271.

LIMITED ADMINISTRATION, a special administration of certain specific effects, such as a term of years, &c.

LINDESFERN, Holy Island, which was formerly a bishop's see.

Linea recta semper præfertur transversali. Co. Lit. 10.—(The right line is always preferred to the collateral.)

It is a rule of descent that the lineal ancestors, *in infinitum*, of any person deceased, shall represent their ancestor, that is, shall stand in the same place as the person himself would have done had he been living. See **CANONS OF INHERITANCE**.

Linea recta est index sui et obliqui; lex est linea recti. Co. Lit. 158.—(A right line is an index of itself, and its oblique; law is a line of right.)

LINEAGE [*lignage*, Fr.], race, progeny, family, ascending or descending.

LINEAL CONSANGUINITY, that relationship which subsists between persons descended in a right line, as grandfather, father, son, grandson.

LINEAL DESCENT, the descent of an estate from ancestor to heir in a right line.

LINEAL WARRANTY, where the heir derived, or might by possibility have derived, his title to the land warranted, either from or through the ancestor who made the warranty; as where a father or an elder son in the life of the father released to the disseisor of either themselves or the grandfather, with warranty, this was lineal to the younger son. *Litt.* § 703. Abolished by 3 & 4 *Wm. IV.*, c. 74, § 14.

LIQUIDATED DAMAGE, a certain, fixed, and ascertained sum, in contradistinction to a penalty, which is both uncertain and unascertained.

It must be remarked, that calling a sum liquidated damages will not change its character as a penalty, if upon the true construction of the instrument it must be deemed to be a penalty. Indeed, wherever the payment of a small sum is secured by the payment of a much larger sum, it must be considered as a penalty, and this especially where the sum referred to is penal in its nature. But where it is agreed that if a party do, or neglect to do, a particular thing in respect to which the damages are uncertain, a certain sum shall be paid by him, there the sum stated may be treated as a liquidated damage, if the terms of the contract do not evince a different intention.

LIS MOTA (the dispute having arisen). It is a rule of evidence that declarations of deceased members of a family, in matters of pedigree, are inadmissible, if made after the statement of facts had arisen on which the claim was founded, which for that purpose was to be deemed the commencement of the *lis mota*. 6 *C. & P.* 560.

LIS PENDENS (a pending suit).

The actual pendency of a suit in equity, was regarded as notice to all the world, though after a complete decision the public attention may be supposed to be drawn off to other matters, and therefore a person was allowed to be ignorant of a final decree of the court made in a cause in which he was not concerned.

But now, by 2 *Vict.*, c. 11, § 7, it is enacted, that no *lis pendens* shall bind a purchaser or mortgagee without express notice thereof, unless and until a memorandum or minute, containing the name of the usual or last known place of abode, and the title, trade, or profession of the person whose estate is intended to be affected thereby, and the Court of Equity, and the title of the cause or information, and the day when the bill or information was filed, shall be left with the senior master of the Court of Common Pleas, who shall forthwith enter the same particulars in a book, in alphabetical

order, by the name of the person whose estate is intended to be affected by such *lis pendens*; and such officer shall be entitled for any such entry to the sum of 2s. 6d., and the provisions contained in the act in regard to the re-entering of judgments every five years, and the fee payable to the officer thereon, shall extend to every case of *lis pendens* which shall be registered under the provisions of the act.

LIST [*liste*, Fr.], a roll; a catalogue. See **CIVIL LIST**.

Litteræ patentes regis non erunt vacuæ. 1 Bul. 6.—(The King's letters patent shall not be void.)

LITERARY PROPERTY. See **COPYRIGHT**.

LITERATURA, putting children to school.

This liberty was anciently denied to those parents who were servile tenants without the lord's consent: and this prohibition of educating sons was from the fear of the son being bred to letters might enter into holy orders, and so stop or divert the services which he might otherwise do as heir to his father.

LITIGANT, one engaged in a law-suit.

LITIGATION, judicial contest; law-suit.

LITIGIOUS CHURCH, where two presentations to a church are offered to the bishop upon the same avoidance.

LITIS CONTESTATIO, the issue of an action. *Civil Law Term*.

Litis nomen, omnem actionem significat, sive in rem, sive in personam sit. Co. Lit. 292.—(A lawsuit signifies every action, whether it be for the thing, or against the person.)

LITISPENDENCE [*lis*, Lat., strife, and *pendeo*, to hang], the time during which a law-suit is going on. *Obsolete*.

LITTLE GOES, a species of lottery, declared unlawful. 42 *Geo. III.*, c. 119.

LITURGY [*λέτρος*, Gk., public, and *εργον*, work], the book of Common Prayer used in the Established Church, as confirmed by 13 & 14 *Car. II.*, c. 4.

It would be disingenuous not to acknowledge, that the chief part of this Liturgy was in use in the Roman Catholic Church, from which the Church of England is reformed; but it would betray a want of acquaintance with ecclesiastical antiquity to suppose that these prayers and services originated in that church, as several of them were in use in the first ages of Christianity, and before the Roman Catholic Church was known. *Clarke's Bible*, p. xxv.; *Cookson's Com. Prayer*.

LIVELODE, maintenance, support.

LIVERY [*livrer*, Fr.], the act of giving or taking possession; release from wardship; also the writ by which possession was obtained. A particular dress. In London, the collective body of liverymen, amounting to about 16,000. Also, the privilege of a particular company or society. See **SKISIS**.

LIVERY-MAN, an inferior servant; also a member of some company in the city of London.

LIVERY-OFFICE, an office appointed for the delivery of lands.

LOAN [*lœn*, Sax.], any thing lent or given to another on condition of return or repayment. A sum of money confided to another, generally on the security of a promissory note or bond, the guarantee of a third party, or the possession or assignment of property. The usury laws have been relaxed with regard to contracts for the loan or forbearance of money above the sum of 10*l.* sterling, provided it be not secured upon any lands, tenements, or hereditaments, or any estate or interest therein.

If it be effected by the Government on the pledge of certain taxes to pay the interest, it is a *public loan*. The practice of borrowing money to defray the extraordinary expenses in time of war, has given rise to our national debt.

LOAN, *gratuitous*, or **COMMODATE**, a class of bailment which is called *commodatum* in the Roman law, and is denominated by Sir William Jones a *loan for use* (*prêt à usage*), to distinguish it from *mutuum*, a loan for consumption. It is the gratuitous lending of an article to the borrower for his own use.

Several things are essential to constitute this contract. (1) It must be either goods or chattels lent, in contradistinction to a thing deposited, or sold, or entrusted to another for the sole benefit or purposes of the owner. (2) It must be lent gratuitously. (3) It must be lent for the use of the borrower, which must be the principal object, and not merely accessorial. (4) The property must be lent to be specifically returned by the lender at the determination of the bailment; and in this respect it differs from a *mutuum*, or loan for consumption, where the thing borrowed, such as corn, wine, oil, or money, is to be returned in kind.

The borrower has the right to use the thing during the time and for the purpose which was intended between the parties. The loan is to be considered as strictly personal, unless from other circumstances a different intention may fairly be presumed. The borrower must take proper care of the thing borrowed, use it according to the lender's intention, restore it at the proper time, and in a proper condition.

The lender must suffer the borrower to use and enjoy the thing loaned during the time of the loan, according to the original intention, without any molestation or impediment, under the peril of damages. He must reimburse the borrower the extraordinary expenses to which he has been put for the preservation of the thing lent. He is bound to give notice to the borrower of the defects of the thing loaned; and if he do not, but conceal them, and an injury occurs to the borrower thereby, the lender is responsible. Where the thing has been lost by the borrower, and, after he has paid the value thereof to the lender, the thing is restored to the lender, in such a case, the lender must return to the borrower either the price paid or the thing; for, by such payment of the loss, the property is effectively transferred to the borrower.

Mr. Justice Story thus concludes his observations on gratuitous loans—a subject of daily occurrence in the actual business of human life: “It has, however,” says he, “furnished very little occasion for the interposition of judicial tribunals, for reasons equally honorable to the parties and to the liberal spirit of polished society. The generous confidence thus bestowed is rarely abused; and if a loss or injury unintentionally occurs, an indemnity is either promptly offered by the borrower, or compensation is promptly waived by the lender.” *Story's Bailments*, c. iv.

LOAN SOCIETIES, institutions established for the purpose of advancing money on loan to the industrious classes, and receiving back payment for the same by instalments, with interest.

By 3 & 4 Vict., c. 110, continued by subsequent statutes, forms of proceeding of a similar nature to those prescribed in the acts for savings banks and friendly societies are requisite to enable a society for advancing loans to avail themselves of this act. Three copies of the rules must be transmitted to the certifying barrister, one of which he is directed to keep, another to return to the society, and the third to forward to the clerk of the peace for the county, city, or borough in which the society is formed, in order that they may be laid by him before the general quarter sessions for the confirmation and allowance of that court. The legislature also directs the rules of the society to be inserted in a book, which is to be open at seasonable times for the inspection of the members; and it enacts that they shall be binding on all persons obtaining loans, or their representatives. The property of the society is vested in one or more trustees for its use, who are empowered to maintain or defend actions and other proceedings in their own names, on account of the body at large; and the treasurer and other persons entrusted with the pecuniary affairs of the society must give to the trustees security for the faithful discharge of their duties.

These societies are entitled to issue debentures for money deposited with them (otherwise than by way of gift), and these, as well as all other notes and instruments given in pursuance of this act, are exempted from stamp duty. They are also placed on the same footing with savings banks, in the event of the death of a claimant intestate, who is entitled to less than 50*l.*, the production of a will or letters of administration not being requisite.

The amount of loan which it is lawful for these societies to advance is limited to 15*l.*; and no second loan can be granted until the first is repaid. The society is permitted to receive, by way of discount, at the time of the loan, such interest as shall be specified by its enrolled rules, not exceeding 12*l.* per cent. per annum, and to receive the principal by instalments, at such times and proportions as its rules specify, but so that the

first re-payment shall not be sooner than the eleventh day from the time of the advance.

With respect to the recovery of loans, the act has provided a form of note to be signed by the borrower and two sureties; and upon failure in payment, the party liable may be summoned before any one of her Majesty's justices of the peace, who is empowered to levy what is due by distress and sale of the goods of the defaulter. The society (in the person of its treasurer) may also proceed against the party liable, in any county court or court of requests having jurisdiction, and, where the sum due happens to exceed the amount for which the court has jurisdiction, may, nevertheless, recover such part of the debt as that court can give judgment for, and it is willing to accept in lieu of the whole.

An abstract of the accounts of the society is to be made out yearly up to the 31st December, and sent during the month of January to the certifying barrister, and by him laid before both Houses of Parliament.

LOCAL [*locus*, Lat.], having the properties of place. Something fixed to the freehold, or tied to a certain place.

LOCAL ACTIONS, those referring to some particular locality, as in the case of trespasses on land, the venue must be laid in the proper county where the cause of action arose.

The real actions and the mixed action of ejectment are local; but the personal actions are for the most part transitory, i.e., their cause of action may be supposed to take place any where, but when they are brought for any thing in relation to realty, they are then local.

LOCAL COURTS, tribunals of a limited and special jurisdiction, as the several courts of request throughout the country.

LOCAL ALLEGIANCE, such as is due from an alien or stranger born, for so long as he continues within the sovereign's dominions and protection; and it ceases the instant such stranger transfers himself from this kingdom to another. But, if an alien, seeking the protection of the Crown, and having a family and effects here, should, during a war with his native country, go thither and there adhere to our enemies for purposes of hostility, he may be dealt with as a traitor. *Fost.* 185.

LOCAL TAXES, those assessments which are limited to certain districts, as poor rates, parochial taxes, county rates, &c. 7 & 8 *Vict.*, c. 33.

LOCATIO-CONDUCTIO, or **HIRING**, a bailment always for a reward or compensation. See **HIRING**.

LOCKER-UP, a gaoler, an under-turnkey.

LOCKMAN, an officer in the Isle of Man, to execute the orders of the governor, much like our under-sheriff.

LOCOCESSION, the act of giving place.

LOCULUS, a coffin. *Old Records*.

LOCUS IN QUO (the place in which). 1 *Salk.* 94.

LOCUS PARTITUS, a division made between two towns or counties, to make trial where the land or place in question lies. *Fleta*, l. 4, c. 15.

LOCUS PENITENTIÆ (a place of repentance), a power of drawing back from a bargain before any act has been done to confirm it in law.

Locus pro solutione redditus aut pecunie secundum conditionem dimissionis aut obligationis est strictè observandus. 4 Co. 73.—(A place according to the condition of a lease or bond, for the payment of rent or money, is to be strictly observed.)

LODE-MANAGE, or **LODE-MEREGE**, the hire of a pilot for conducting a vessel from one place to another. *Cowell*.

LODGINGS, habitation in another's house.

Lodgings may be let in the same manner as lands and tenements; in general, however, they are let either by agreement in writing between the landlord and tenant, or by parol agreement. In all cases, there should certainly be a written agreement, in order to avoid all possibility of dispute as to the terms of the demise. The agreement should particularly specify the amount of rent, the time of entry, the length of notice to quit required, and such other particulars as the special circumstances of the case may require. If the lodgings be furnished, it will be proper to have a schedule of the goods they contain affixed to the agreement, in the same manner as in the case of a lease of a house with goods.

In taking lodgings, particularly those which are unfurnished, especial care should be taken that the rent of the house had been paid up and will probably continue to be paid; for, if not, the furniture and goods of the lodger will be liable to a distress for such rent: previously to taking the lodgings, inquiries should therefore be made on the subject of the housekeeper's landlord, and also of the tax-gatherer and collector of the parochial rates; for if distresses be levied for them also, it may cause considerable inconvenience and annoyance to the lodger. Where fixtures are taken from an outgoing tenant, it should also be ascertained that the tenant does not pay for what in fact belong to the premises, and which the tenant leaving has no right to sell.

Lodgings constitute such an interest according to the duration of the term, that for many purposes the lodgers are considered in law in the light of householders, and enjoy the same protection and greater immunities. The law does not make any distinction between lodgers and other tenants as to the payment of their rent, or turning them out of possession, for they are, generally, subject to the same regulations as other tenants. A notice to quit has in all cases a reference to the letting, and, therefore, in the case of lodgings let by the month, a month's notice is sufficient. If a tenant quit apartments without giving notice, the landlord may recover the rent, though he has put up a bill

in the window for the purpose of letting the apartments; or lighted and used fires in the rooms; but if the landlord let the apartments to another tenant, he has rescinded the contract, and cannot recover rent for any subsequent portion of the period included in the original tenancy, during which they remain unoccupied and unproductive.

By 2 & 3 Vict., c. 71, § 38, compensation may be awarded to the extent of 15*l.* by a police magistrate, for wilful damage done by tenants of houses or lodgings, within the metropolitan police district, to the premises or furniture. *Woodf. Land. and Tent.* 158.

A weekly tenant is not liable for double value for holding over. 4 *Geo. II.*, c. 28.

LOGIC [*λόγος*, Gr., reason], an act serving as an instrument to keep the mind from going wrong, whilst engaged in the process of thinking: or, as Aldrich defines it—*ars instrumentalis dirigens mentem in cognitione rerum*. It comprehends three distinct but progressive operations, which are called simple apprehension, judgment, and discourse. *Art. Log. Comp.*; *Woolley's Introd.*; *Whateley's Logic*.

LOGIST, an expert accountant.

LOGIUM, a lodge, hovel, or out-house. *Old Records*.

LOLLARDY [*lolium*, a tare, and not from *Lollhard*, a surname, as Dr. Mosheim has most satisfactorily shown], the name given to the Protestants at the time of the Reformation.

LONDON, the metropolis of Great Britain.

The name of this metropolis has exercised the skill and imagination of numerous antiquaries, from the earliest ages of christianity to the present. Some assert that it originated, and most probably it did so, from the Celtic language, supposed to have been spoken by part of Gallia and the whole of Great Britain, and now preserved among the Welsh and the inhabitants of Low Brittany in France. *Lhongdin*, in that tongue, signifies "a town of ships;" and the correspondence of sounds, united to the situation of this city, makes considerably in favour of this derivation. Camden brings, in its support, the words *Llhong* and *Dinas*, which he translates "the city of ships." Others propose *Lhawn*, full; and *Dyn*, man, "a city full of men:" but as this last denomination bears no characteristic analogy to the place in question, it does not deserve much credit, although it may be respected on account of the ingenuity of its author. The word *Lud*, which signified a lord or prince, may have furnished the first syllable; and, indeed, it seems that, independently of being the name of an ancient king of the Britons, preserved in the denomination of some places still existing, as *Ludgate*, &c., the title of the chieftain of the Franks was *Lud*. *Clovis* was *Clodoveus*; and it is well known that the C or K was not pronounced in this word, since that of *Ludovious* or *Ludoix*, arose from it. The testimony of ancient writers proves that London was the

chief town of the Trinobantes, and most likely peculiarly favoured or inhabited by the king or lord of the nation. This ingenious etymon seems to carry with it a great deal of probability, and may satisfy the antiquarian, since no other brings more light on the subject. *Luddown* might have easily been softened into *London*, "the city of *Lud*;" that is, the place mostly resorted to by the chief of the Trinobantes. The ancient Britons and Welsh still call it *Lundayn*; the ancient Saxons, *London ceaster*, or *Castrum Londini*. Tacitus, Ptolemy, and Antoninus called it *Londinium*; Ammianus, *Lundinium*; Stephanus, *Lindonion*; Bede, *Lundonia* and *Civitas Lundonia*. The name of *Augusta* was also conferred on this city according to Ammianus Marcellinus, very probably on account of the traditional report that it was surrounded with walls by Constantine the Great, whose mother was styled *Helena Augusta*. The French have unaccountably added *res* to the first syllable, and pronounce it *Londres*; the Spaniards, *Londra*; the Portuguese, *Londre*; and the Dutch, *Lunden*. *Encyc. Lond.*

It is a county of itself, a market overt every day, except Sundays, and a corporation by prescription. It is divided into twenty-six wards, over each of which there is an alderman, and is governed by a Lord Mayor, who is chosen yearly, and presented to the Queen, or, in her absence, to her justices, or the barons of the Exchequer at Westminster. He is the chief justice of gaol delivery, escheator within the liberties, and bailiff of the river Thames, &c. He has also jurisdiction over the local courts, which are the Court of Hustings, Sheriffs' Court, Mayor's Court, Court of Common Council, &c.

The customs of London are many and various; they are against the common law, but made good by special usage, and confirmed by act of Parliament. 4 *Inst.* 249; 8 *Rep.* 126.

The customs of London differ from all others in point of trial: for, if the existence of the custom be brought in question, it shall not be tried by a jury, but by certificate from the Lord Mayor and aldermen by the mouth of their Recorder; unless it be such a custom as the corporation is itself interested in, as a right of taking toll, &c., for then the law permits them not to certify on their own behalf.

An action upon the custom of London can only be brought in the Lord Mayor's Court; but the custom may be pleaded in bar in a superior court. It may be used in a superior court by way of defence, and in such cases the superior court will take notice of the custom. *Lavis v. Phillips*, 3 Burr. 1784. As to the mode of certifying the customs of the city, see *Plummer v. Bentham*, 1 Burr. 249. When a custom has once been certified, the superior courts must take notice of it; and cannot require to have it certified over again. *Blacquiere v. Hawkins*,

1 Doug. 380. See CENTRAL CRIMINAL COURT.

LONDON GAZETTE. See GAZETTE.

LONDON SESSIONS. They are held eight times during the year: four as quarter sessions, and the remaining four as original general sessions. The usual times are fixed by the Court of Aldermen. The recorder is the Judge, sitting as the assessor of the Lord Mayor and aldermen. Only misdemeanours are tried here. By 5 & 6 Vict., c. 38, county and borough sessions are prohibited from trying any treason, murder, or capital felony; any offence punishable with transportation for life, and also misprision of treason, political offences, offences against religion, perjury, or subornation of perjury, bribery, forgery, bigamy, abduction, setting fire to growing crops, woods, heath, &c., endeavouring to conceal the birth of a child, offences against the bankrupt and insolvent laws, administering unlawful oaths, blasphemous and seditious libels, conspiracies and combinations, stealing, injuring, or destroying legal records and documents, testamentary papers, and wills. See CENTRAL CRIMINAL COURT.

Longa possessio est pacis jus. Co. Lit. 6.—(Long possession is the law of peace.)

Longa possessio parit jus possidendi et tollit actionem vero domino. Co. Lit. 110.—(Long possession produces the right of possession, and takes away an action from the true owner.)

Longum tempus et longus usus qui excedit memoriam hominum, sufficit pro jure. Co. Lit. 115.—(Long time and long use, which exceeds the memory of man, suffices in law.)

LONG VACATION, the recess from the 10th of August to the 24th of October at common law, and to the 28th October in Chancery, in every year, during which time no pleadings at common law or in equity can be filed or delivered.

LOQUELA, an imparlance.

LOQUELA SINE DIE, a respite to an indefinite time.

Loquendum ut vulgus, sentiendum ut docti. 7 Co. 11.—(Speak as the ordinary people, think as the learned.)

LORD [*hlaford*, *laford*, *lord*, Sax., of *hlaf*, a loaf of bread, and *ford*, to give, because such great men kept extraordinary houses, and fed all the poor; for which reason they were called *givers of bread*, a thing now much out of date, great men being fond of retaining the title, but few regarding the practice for which it was first given], monarch, governor, master. *Encyc. Lond.*

LORD IN GROSS, he who is lord, not by reason of any manor, as the king in respect of his Crown, &c. *Very lord* is he who is immediate lord to his tenant; and *very tenant*, he who holds immediately of that lord. So that, where there is lord paramount, lord mesne, and tenant, the lord paramount is not very lord to the tenant.

LORD CHAMBERLAIN. See CHAMBERLAIN.

LORD CHANCELLOR. See CHANCELLOR.

LORD HIGH ADMIRAL. See ADMIRALTY.

LORD HIGH STEWARD. See HIGH STEWARD.

LORD LIEUTENANT, the chief governor or viceroy of Ireland.

LORD LIEUTENANT OF COUNTIES, an officer of great distinction, appointed by the Crown for the managing of the standing militia of the county, and all military matters therein. Lords Lieutenant are supposed to have been introduced about the reign of Henry VIII., for they are mentioned as known officers in the 4 & 5 Ph. & M., c. 3, though they had not been long in use; for Camden speaks of them in the time of Queen Elizabeth, as extraordinary magistrates constituted only in times of difficulty and danger. They are generally of the principal nobility, and of the best interest in the county; they are to form the militia in case of a rebellion, &c., and march at the head of them, as the Crown shall direct. They have the power of commissioning colonels, majors, captains, and subaltern officers; also to present to the sovereign the names of deputy-lieutenants, who are to be selected from the best gentry in the county, and act in the absence of the Lord Lieutenant. Subservient to the Lord Lieutenant and the deputy lieutenants are the justices of the peace, who, according to the orders they receive from them, are to issue warrants to the high and petty constables, &c., for military service. *Encyc. Lond.*

LORD OF A MANOR, one who possesses a copyhold. See COPYHOLD.

LORD PRIVY SEAL, before the 30 Hen. VIII., was generally an ecclesiastic; since which the office has been usually conferred on temporal peers, above the degree of barons. His office is by patent. The Lord Privy Seal, receiving a warrant from the signet office, issues the privy seal, which is an authority to the Lord Chancellor to pass the Great Seal, where the nature of the grant requires it. But the privy seals for money begin in the Treasury, whence the first warrant issues, countersigned by the Lord Treasurer. On the Lord Privy Seal are attendant clerks, who have two deputies to act for them. *Encyc. Lond.*

LORD AND VASSAL, grantor and grantee in the feudal system.

LORDS' ACT, 32 Geo. III., c. 28, amended by 49 Geo. III., c. 6. It was passed for the relief of Insolvent Debtors, but is now abolished. 1 & 2 Vict., c. 110.

LORDS OF ERECTION, those favourites to whom the Crown gave those benefices which were formerly held by abbots and priors.

LORDS, HOUSE OF. See HOUSE OF LORDS.

LORDS MARCHERS, those noblemen who lived on the marches of Wales or Scotland; who in times past had their laws and power of life and death, like petty kings. Abolished by 27 Hen. VIII., c. 26; and 6 Edw. VI., c. 10.

LORDS OF PARLIAMENT, those who have seats in the House of Lords.

LORDS OF REGALITY, persons to whom rights of civil and criminal jurisdiction were given by the Crown. *Scotch Phrase.*

LORDS SPIRITUAL, the archbishops and bishops who have seats in the House of Lords.

LORDS TEMPORAL, those lay peers who have seats in the House of Lords. See **HOUSE OF LORDS**.

LORDSHIP, dominion, seignior, domain; also title of honour used to a nobleman not a duke. It is also the titular appellation of the Judges and some other persons in authority and office.

LOST BILL OF EXCHANGE ACT, 9 & 10 Wm. III., c. 17, § 3, which enacts that if an inland bill of exchange for 5*l.* or upwards be lost before it is due, another similar bill must be given, if the loser will give an indemnity against liability on the lost instrument.

Against the person finding the bill the real owner may maintain an action of trover.

Equity will, however, decree payment of lost or mutilated securities, requiring, of course, an affidavit of the loss, and a proper indemnity.

LOT, a contribution or duty. See **SCOT**.

LOT, or **LOTH**, the 13th disk of lead in the mines of Derbyshire, which belongs to the Crown.

LOTHERWITE, or **LEYERWIT**, a liberty or privilege to make amends for lying with a bond-woman without license. See **LEIRWITE**.

LOTTERY, a kind of public game at hazard, in order to raise money for the service of the state. It was appointed by the authority of Parliament and managed by commissioners appointed by the Lords of the Treasury. It consisted of several numbers of blanks and prizes which were drawn out of wheels, one of which contained the numbers, and the other the corresponding blanks or prizes. The 6 *Geo. IV.*, c. 60, utterly abolished it.

LOURCURDUS, a ram, or bell-wether. *Cowell.*

Lou le ley done chose, la ceo done remedie a vener a ceo. 2 *Roll. R.* 17.—(Where the law gives a right, it gives a remedy to recover.)

Lubricum linguæ non facile trahendum est pænam. *Cro. Car.* 117.—(The slipperiness of the tongue does not easily draw punishment.)

LOVE-DAY, the day on which any dispute was amicably settled between neighbours; or a day in which one neighbour helps another without hire.

LOWBOTE, a recompense for the death of a man killed in a tumult.

LUCID INTERVAL "By a perfect interval," said Lord Thurlow (*Attorney General v. Parnter*, 3 *Bro. C. C.* 234), "I do not mean a cooler moment, an abatement of

pain and violence, or of a higher state of torture—a mind relieved from excessive pressure; but an interval in which the mind, having thrown off the disease, had recovered its general habit." And see D'Aguesseau's description in his pleading in the case of the Abbé d'Orleans, quoted under the head, "**IDIOTS AND LUNATICS.**"

"While the doctrine of lucid intervals," observes Dr. Ray, "as explained by the language above quoted, is upheld by scarcely a single eminent name in the medical profession, we find that their existence is either denied altogether, or they are regarded as being only a remission, instead of an intermission, of the disease; an abatement of the severity of the symptoms, not a temporary cure. Mr. Haslem, who is no mean authority on any question connected with insanity, emphatically declares that, "as a constant observer of this disease for more than twenty-five years, I cannot affirm that the lunatics with whom I have had daily intercourse, have manifested alternations of insanity and reason. They may at intervals become more tranquil and less disposed to obtrude their distempered fancies into notice. For a time their minds may be less active, and the succession of their thoughts consequently more deliberate; they may endeavour to effect some desirable purpose and artfully conceal their real opinions, but they have not abandoned nor renounced their distempered notions. It is as unnecessary to repeat that a few coherent sentences do not constitute the sanity of the intellect, as that the sounding of one or two notes of a keyed instrument could ascertain it to be in tune." *Med. Juris. of Insanity*, 224.

"The mania," says Foderè, "which is accompanied by fury, is very often periodical, that is, as if granting an occasional truce to the patient, it appears only at certain epochs, between which he enjoys all his reason, and seems to conduct and judge in all respects like other men, if we except in regard to certain ideas, the thought of which may at any time occasion a fresh paroxysm." *De Médecine Légale*, t. i., p. 205, § 140.

Georget, while he speaks of lucid intervals "as returns to reason," is careful to add that, "in his state, patients frequently experience some degree of *malaise*, of some disturbance of their ideas, and weakness of mind, which prevents them from fixing their attention for any length of time on a particular subject, from engaging in reading, writing, or attending to their affairs." *Des Maladies Mentales*, 46.

"There are few cases of mania or melancholy," says Dr. Read, "where the light of reason does not now and then shine out between the clouds. In fevers of the mind as well as those of the body, there occur frequent intermissions. But the mere interruption of a disorder is not to be mistaken for its cure or its ultimate conclusion. Little stress ought to be laid upon those occasional and uncertain disentanglements

of intellect, in which the patient is for a time only extricated from the labyrinth of his morbid hallucinations. Madmen may show at starts more sense than ordinary men." *21st Essay on Hypochond. Affec.*

"But however calm and rational," observes Dr. Combe, "the patient may appear to be during the lucid intervals, as they are called, and while enjoying the quietude of domestic society, or the limited range of a well regulated asylum, it must never be supposed that he is in as perfect possession of his senses as if he had never been ill. In ordinary circumstances, and under ordinary excitement, his perceptions may be accurate, and his judgment perfectly sound; but a degree of irritability of brain remains behind, which renders him unable to withstand any unusual emotion, any sudden provocation, or any unexpected and pressing emergency. Were not this the case, it is manifest that he would not be more liable to a fresh paroxysm than if he had never been attacked. And the opposite is notoriously the fact; for relapses are always to be dreaded, not only after a lucid interval, but even after perfect recovery. And it is but just as well as proper to keep this in mind, as it has too often happened that the lunatic has been visited with the heaviest responsibility for acts committed during such an interval, which, previous to the first attack of the disease, he would have shrunk from with horror." *Observ. on Ment. Derang.* 241.

The principle of law, which holds the civil responsibilities of the insane to be unimpaired during the lucid interval, is generally correct. It should be the duty of courts, however, to view their acts done at such times with the most watchful jealousy, because their minds, though left free from all delusion, are nevertheless weak and irritable, and they are easily induced, by the arts of unprincipled men, to enter into transactions, the folly of which would have been obvious enough to them before they began to be insane.

"The evidence in support of the allegation of a lucid interval," said Lord Thurlow, "after derangement at any period has been established, should be as strong and demonstrative of such fact, as where the object of the proof is to establish derangement. The evidence in such a case, applying to stated intervals, ought to go to the state and habit of the person, and not to the accidental interview of any individual, or to the degree of self possession in any particular act."

It appears, from a note in *Beck's Med. Juris.* 463, that Lord Eldon dissented from this proposition, and thus stated his objections to it to Lord Thurlow himself:—"I have seen you exercising the duties of Lord Chancellor with ample sufficiency of mind and understanding, and with the greatest ability. Now, if Providence should affect you with a fever, which should have the effect of taking away that sanity of mind for a considerable time (for it does not sig-

nify whether it is the disease insanity or a fever that makes you insane), would any one say that it required such very strong evidence to show that your mind was restored to the power of performing such an act as making a will—an act, to the performance of which a person of ordinary intelligence is competent?" "We are not informed," says Dr. Ray, "how this objection struck Lord Thurlow. It does, however, signify everything, whether it is the disease insanity or a fever that makes one insane—for the delirium of fever is but a casual symptom of that disease—and, together with the pathological condition that gave rise to it, is presumed to disappear with the main disorder on which it depends. This is the ordinary course of nature. On the contrary, mental alienation is the essential, the pathognomonic, and oftentimes the only clearly discernible symptom of mania, and its disappearance furnishes the only intimation, perhaps, that we have of the cure of this disease. Thus our means of deciding this point being so small, we are necessarily led to require stronger evidence of their certainty than of the restoration of the mind in fever, because the latter is confirmed by a multitude of symptoms. Recovery from an attack of fever is a phenomenon that any one can see, but not such is recovery from an attack of mania; because, though the insane delusions, or conduct by which it was manifested, may disappear, it remains to be determined in every case, whether they are not purposely concealed from observation, or proper opportunity has been offered to the patient to bring them forward. Just as the existence of mania requires stronger proof than that of the delirium of fever, so does recovery from the former require stronger proof than recovery from the latter."

In another place Dr. Ray says, "we would have the ground on which the validity of a will is established, distinctly understood to be the character of the act, not the condition of the testator's mind."

"It is important that, on subjects like medical jurisprudence, language should be used with strict adherence to its original and proper signification; and therefore, when a lucid interval is defined by competent authority to be a 'temporary cure' of the disease, a recovery of the mind's general habit, the occurrence of which must be proved by the 'state and habit' of the person, observed during a sufficient length of time, we have to complain that the term is applied to a mere remission in the violence of the symptoms, which lasts but a few minutes, and is proved by a single coherent act."

Not a single case has occurred, so far as can be ascertained, where a person has been convicted of crime during a lucid interval. *Ray's Med. Jurisp. of Insanity*, tit. "Lucid Intervals;" *Beck's Med. Jurisp.* 460.

LUCRATIVE SUCCESSION, that succession which the heir receives by law without paying any value, and which renders him

hable to the debts of his ancestor. *Scotch Term.*

LUCRI CAUSA (for the purpose of gain).

LUMINARE, a lamp or candle set burning on the altar of any church or chapel, for the maintenance whereof lands and rent-charges were frequently given to parish churches, &c. *Ken. Glas.*

LUNACY. See **IDIOTS** and **LUNATICS**.

LUNATIC ASYLUMS, houses established for the reception of insane persons. They are of various descriptions: some being established by law for the public benefit, under the denomination of County Lunatic Asylums; others instituted for the public benefit by the endowment of charitable donors; and others being private houses kept by individuals for their own profit.

County Lunatic Asylums for insane paupers or criminals of the county are regulated by 9 Geo. IV., c. 40, under which a majority of the justices at quarter sessions (not being less than seven), may at any time authorise the erection of a lunatic asylum in their county, or an union with one or more of the adjacent counties, or with voluntary subscribers for the same purpose; and the expenses of such institutions, so far as they are not covered by voluntary contributions, are to be defrayed by the county rates, and the management to be vested in a committee of visitors.

Any poor person chargeable to a parish within the county, and deemed insane, may, by 9 Geo. IV., c. 40, § 38, be brought before two justices of the peace to be examined; and if upon such examination, assisted by a medical man, the justices are satisfied of his insanity, they may send him to the county asylum (or if there is none, then to any hospital or house licensed for the reception of insane persons), and may make order on the parish of his last settlement for the expenses of his conveyance and maintenance, and also of his removal when discharged. The same mode of proceeding may be adopted in the case of lunatics wandering about and at large, unless they have some relative or friend willing to receive them. As to lunatics meditating crime, see 1 & 2 Vict., c. 14; as to insane criminals, see 3 & 4 Vict., c. 54.

The visitors are required to send a yearly report of the patients to the Secretary of State for the Home Department, who may employ an inspector to report to him upon the state of these establishments; and this may be done by the Lord Chancellor also. 2 & 3 Wm. IV., c. 107, § 49.

By 2 & 3 Wm. IV., c. 107, amended by 3 & 4 Wm. IV., c. 64, and 5 & 6 Vict., c. 87, every house for the reception of two or more insane persons (with the exception of the royal hospital of Bethlem, the royal military and naval hospitals, every lunatic asylum, and all hospitals and institutions supported wholly or in part by charity), must be licensed; and in general no such persons can be legally received in a house so

licensed without a written order from the person sending him, and a medical certificate of two physicians, surgeons, or apothecaries, in such form as prescribed by the acts; nor can even a single insane person be legally received or taken charge of in an unlicensed house without such order and certificate, unless by his guardian or relative acting gratuitously, or by his committee appointed by the Lord Chancellor or other person entrusted by the Crown with the care of lunatics. But in the case of pauper lunatics the order is to be under the hand and seal of a justice of the peace or signed by the officiating clergyman and one of the overseers of the parish to which he belongs, and the medical certificate is to be signed by one physician, surgeon, or apothecary. The licenses in question are to be granted annually in London and Westminster, and many of the suburban parishes by a board of persons called the "Metropolitan Commissioners in Lunacy;" in the country, by the justices at quarter sessions. These acts contain minute and special particulars relative to the effective superintendence of such establishments.

LUNDRESS, a sterling silver penny, which was only coined in London. *Lownd's Essay on Coins*, 17.

LUPANATRIX, a bawd or strumpet. 3 *Inst.* 206.

LUPINUM CAPUT GERERE, to be outlawed, and have one's head exposed, like a wolf's, with a reward to him who should take it.

LURGULARY, casting any corrupt or poisonous thing in the water.

LUXURY, excess and extravagance, which was formerly an offence against the public economy, but now not punishable. 1 Jac. I., c. 25.

LYEF-YELD, or **LEF-SILVER**, a small fine paid by a customary tenant to his lord, for leave to plough or sow.

LYON, KING OF ARMS, the Scotch herald.

M.

M, the brand or stigma of a person convicted of manslaughter, and admitted to the benefit of clergy. It was burned on the brawn of the left thumb. *Abolished.*

MAC, a prefix to Irish and Scotch names, signifying a son.

MACE, a large staff, made of the precious metals, and highly ornamented. It is used as an emblem of authority, and carried before certain public functionaries.

MACE-GREFF [*machecarius*, Lat.], one that buys stolen goods, particularly food, knowing it to be stolen. *Brit. c.* 29.

MACE-PROOF, secure against arrest.

MACER, a mace-bearer; an officer attending the Court of Sessions.

MACTATOR, a murderer.

MADHOUSE. See **LUNATIC ASYLUMS**.

MADMAN. See **MENTAL ALIENATION.**

MAGAZINE, a warehouse for all sorts of merchandise.

MÆRE [*mer*, Sax.], famous, great, noted; as *Ælmere*, all famous. *Gibs. Camd.*

MÆG-BOT, compensation for homicide paid by the perpetrator to the kinsmen or family of the slain. *Anc. Inst. Eng.*

MÆG-BURGH, kindred, family.

MAGIC, witchcraft and sorcery. 9 *Geo. II.*, c. 5.

MAGISTER, a master; a person who has attained to some eminent degree in science.

MAGISTRATE, a man publicly vested with authority; a governor; an executor of the laws.

Of magistrates, some are supreme, in whom the sovereign power of the state resides; others are subordinate, deriving all their authority from the supreme magistrate, accountable to him for their conduct, and acting in an inferior, secondary sphere.

The word *magistratus* contains the same element as *mag* (*ister*) and *mag* (*nus*); and it signifies both the person and the office, as we see in the phrase *se magistratu abdicare*. Liv. xxiii. 23. According to Festus, a *magistratus* was one who had *judicium auspiciumque*. *Smith's Dict. of Antiq.*

Magister rerum usus; magistra rerum experientia. Co. Lit. 69, 229.—(Use is the master of things; experience is the mistress of things.)

MAGNA ASSISA ELIGENDA, *writ de.* The first species of extraordinary trial is that of the grand assize, which was instituted by Henry II., in Parliament, by way of alternative offered to the choice of a tenant or defendant in a writ of right instead of the duel. This writ issued to the sheriff to return four knights, who were to elect and choose twelve others to be joined with them, and these formed the grand assize or great jury, which was to try the matter of right. Abolished by 3 & 4 *Wm. IV.*, c. 27.

MAGNA CENTUM, the great hundred, or six score.

MAGNA CHARTA, the great charter of the liberties of England, signed and sealed by King John, in a conference between him and his barons, at Runnymede, between Windsor and Staines, June 19th, 1215, and confirmed by Henry III. and Edw. I.

It is the most ancient written law of the land, and is divided into thirty-eight chapters, the first of which, after the solemn preamble of its being made for the honour of God, the exaltation of the Holy Church, and amendment of the kingdom, &c., ordains, that the Church of England shall be free, and all ecclesiastical persons enjoy their rights and privileges. The 2d. is of nobility, knight-service, relief, &c. The 3rd. concerns heirs and their being in ward. The 4th. directs guardians for heirs within age, who are not to commit waste. The 5th. relates to the custody of lands, &c., of heirs, and delivery of them up when the heirs are of age. The 6th. is concerning the marriage

of heirs. The 7th. appoints dower to women, after their husbands' death, a third part of the lands, &c. The 8th. relates to sheriffs and their bailiffs, and requires that they shall not seize lands for debts, where there are goods, &c., the surety not to be distrained where the principal is sufficient. The 9th. grants to London, and to all cities and towns, their ancient liberties. The 10th. orders that no distress shall be taken for more rent than is due, &c. The 11th. provides that the Court of Common Pleas is to be held in a certain place. The 12th. gives assizes for remedy on disseisin of lands, &c. The 13th. relates to assizes of darrein presentment brought by ecclesiastics. The 14th. enacts that no freeman shall be amerced for a fault, but in proportion to the offence, and by the oaths of lawful men. The 15th. that no town shall be distrained to make bridges, &c., but such as of ancient times have been accustomed. The 16th. is for the repairing of sea-banks and sewers. The 17th. prohibits sheriffs, coroners, &c., from holding pleas of the Crown. The 18th. enacts that the king's debtor dying, the king shall be the first paid his debt. The 19th. directs the manner of levying purveyance for the king's house. The 20th. concerns castleward, where a knight was to be distrained for money for keeping his castle on his neglect. The 21st. forbids sheriffs, bailiffs, &c., to take the horses or carts of any person to make carriage without paying for it. The 22d. gives to the king lands of felons for a year and a day, and then to the lord of the fee. The 23rd. requires weirs to be put down in rivers. The 24th. directs the writ *præcipe in capite* for lords against tenants offering wrong, &c. The 25th. declares that there shall be but one measure throughout the land. The 26th. grants inquisition of life and member. The 27th. relates to knight-service, petit-serjeanty, and other ancient tenures. The 28th. directs that no man shall be put to his law on the bare suggestion of another, but by lawful witnesses. The 29th. declares that no freeman shall be disseised of his freehold, imprisoned, and condemned, but by judgment of his peers, or by the law of the land. The 30th. requires that merchant-strangers be civilly treated, &c. The 31st. relates to tenures coming to the king by escheat. The 32d. enacts that no freeman shall sell land, but so that the residue may answer the services. The 33rd. directs that patrons of abbey, &c., shall have the custody of them in the time of vacation. The 34th. enacts that a woman shall have an appeal for the death of her husband. The 35th. directs the keeping of the county court monthly, and also the times of holding the sheriff's tourn and view of frank pledge. The 36th. makes it unlawful to give lands to religious houses in mortmain. The 37th. relates to escuage and subsidy. The 38th. ratifies and confirms this Great Charter.

Magna charta et charta de foresta sunt appell

les deux grand charters. 2 Inst. 570.—(The Magna Charta, and the Charter of the Forest, are called the two great charters.)

Magna fuit quondam magnæ reverentia chartæ. 2 Inst. Proem.—(Reverence for the great charter was formerly great.)

MAGNA PRECARIA, a great or general reap-day.

MAGNUS PORTUS, the town and port of Portsmouth.

MAHA-GEN, a banker or any great shop-keeper among the Hindoos.

MAHAL [Indian, literally a place], any land or public fund producing a revenue to the government of Hindoostan. *Mahalaat* is the plural.

MAIDEN, an instrument formerly used in Scotland for beheading criminals. It consisted of a broad piece of iron, about a foot square, very sharp in the lower part, and loaded above with lead. At the time of execution it was pulled up to the top of a frame, about ten feet high, with a groove on each side for the maiden to slide in. The prisoner's neck being fastened to a bar underneath, and the sign given, the maiden was let loose, and the head instantly severed from the body. It was the prototype of the French guillotine.

MAIDEN ASSISE, an assize whereat no capital conviction takes place. In such a case, the sheriff of the county presents the Judges with white gloves. *Encyc. Lond.*

MAIDEN RENTS, a noble paid by the tenants of some manors on their marriage. This was said to be given to the lord for his omitting the custom of *macheta*, whereby he was to have the first night's lodging with his tenant's wife; but it seems more probably to have been a fine for licence to marry a daughter.

MAIGNAGIUM [*maignen*, Fr.], a brazier's shop, or perhaps a house.

MAIHEM. See MAYHEM.

Maihemium est inter crimina majora minimum, et inter minora maximum. Co. Lit. 127.—(Mayhem is the least of great crimes, and the greatest of small.)

Maihemium, est membri mutilatio; et dici poterit, ubi aliquis in aliquâ parte sui corporis effectus sit inutilis ad pugnandum. Co. Lit. 126.—(Mayhem is the mutilation of a limb, and is called when any one is so hurt in his body, that a member used in fight is rendered useless.)

Maihemium est homicidium inchoatum. 3 Inst. 118.—(Mayhem is incipient homicide.)

MAIL, a bag of letters carried by the post, or the vehicle which carries the letters. Also, any armour.

MAILE, a kind of ancient money, or silver halfpence. 9 Hen. V.

MAILS AND DUTIES, the rents of an estate, whether in money or victuals. *Scotch phrase.*

MAIMING, depriving of any necessary part.

MAINAD, a false oath; perjury.

MAINE-PORT, a small tribute, commonly of loaves of bread, which in some places the

parishioners pay to the rector, in lieu of small tithes.

MAINOVRE, or MAINŒUVRE, some trespass committed by hand.

MAINOUR, MANOUR, or MEINOUR, a thing taken away which is found in the hand of the thief who took it.

MAINPERNABLE, that may be held to bail.

MAINPERNOR [*main*, Fr., hand, and *preneur*, taker], surety, a kind of bail. See BAIL.

MAINPRISE [*main*, Fr., and *pris*, taken], delivery into the custody of a friend upon security for appearance. The writ of mainprise is obsolete.

MAINSWORN, forsworn.

MAINTAINORS, persons who second or support a cause depending between others, by disbursing or making friends for either party, &c., not being interested in the cause.

MAINTENANCE, an officious intermeddling in a suit, which in no wise belongs to one, by assisting either party with money, or otherwise to prosecute or defend it. By the Roman law, it was a species of *crimen falsi* to enter into any confederacy, or do any act to support another's law-suits, by money, witnesses, or patronage.

It is either *ruralis*, in the country, as where one assists another in his pretensions to lands, by taking or holding the possession of them for him; or where one stirs up quarrels or suits in the country; or it is *curialis*, in a court of justice, where one officiously intermeddles in a suit depending in any court, which does not belong to him, and with which he has nothing to do. 2 Rol. Abr. 115. Maintaining suits in the spiritual courts is not within the statutes relating to maintenance. Cro. Eliz. 549. A man may, however, maintain a suit in which he has any interest, actual or contingent; and also a suit of his near kinsman, servant, or poor neighbour, out of charity and compassion, with impunity. Bac. Abr., tit. Maintenance. It is an invidious inquiry, but suggested by the practice of a peculiar class of lawyers, how far an attorney may be guilty of this offence. An attorney ought not to undertake a suit upon an understanding that he would bear all the costs out of his own pocket, and that his client should be indemnified from all loss. If an attorney take up a doubtful claim, and inform the party of it, and offer to recover the same for him upon terms of future profit and advantage to himself, derivable from the fruits of such suit, he is, according to the generally received opinion, guilty of maintenance, and in the second instance, barratry; but *secus* the bare solicitation to conduct a suit. The simple advancing of money for a suit, however poor the client may be, cannot be deemed maintenance while the attorney has any expectation of being repaid; and, indeed, such an act is a charitable office, where the motives are upright and correct.

Any legitimate common interest will justify the uniting of parties, in subscribing to bear expenses even of a third party, where the subscribers have an interest.

This offence is punished by common law, and also by 1 Ric. II., c. 4, by fine and imprisonment; and by 32 Hen. VIII., c. 9, by a forfeiture of 10l.

Also, the protection and support of children, parents, wives, &c.

MAJESTY, a title of kings. It was first used among ourselves in the reign of Henry VIII.

Majestas is defined by Ulpian (*dig.* 48, *tit.* 4, § 1) to be "*crimen illud quod adversus populum Romanum vel adversus securitatem ejus committitur.*" He then gives various instances of the crime of *majestas*, some of which pretty nearly correspond to treason in English law; but all the offences included under *majestas* comprehend more than our term treason. One of the offences included in *majestas* was the effecting, aiding in, or planning the death of a *magistratus populi Romani*, or of one who had *imperium* or *potestas*. Though the phrase, "*crimen majestatis*," was used, the complete expression was *crimen læsæ, imminutæ, diminutæ, minutæ, majestatis*.

MAJOR [*maier*, Old Eng., power], a mayor or commanding officer; also, a person of full age, as distinguished from a minor.

Major hæreditas venit unicuique nostrum à jure et legibus quam à parentibus. 2 Inst. 56.—(A greater inheritance comes to every one of us from right and the laws than from parents.)

Majore pœnâ affectus quam legibus statuta est, non est infamis. 4 Inst. 66.—(One affected with a greater punishment than is provided by the laws, is not infamous.)

Majori inest minus.—(The less is considered in the greater.)

MAJOR DOMO, a steward or master of a household.

MAJORA REGALIA, the greater rights of the Crown.

MAJORITY, full age; also, the greater number; the office and rank of major.

MAISNADA, a family.

MAISON DE DIEU, a monastery, hospital, or alms-house.

MAISURA, a house, mansion, or farm.

MAJUA, a petty dealer in Hindoostan.

MAJUN, a banker, or considerable trader in Hindoostan.

MAJUS JUS, a writ or law proceeding in some customary manors, in order to try a right to land.

Majus dignum, trahit ad se minus dignum. Co. Lit. 43.—(The more worthy draws to itself the less worthy.)

Majus est delictum seipsum occidere quam alium. 3 Inst. 54.—(It is a greater crime to kill one's self than another.)

MAKER, the person who signs a promissory note, who stands in the same situation, after the note is endorsed, as the acceptor of a bill of exchange.

MAKING LAW, clearing one's self of an action, &c., by oath and the oath of neighbours.

MAL, a prefix, meaning bad, wrong, fraudu-

lent; as mal-administration, mal-practice, mal-versation, &c.

MALA, a male or port-mail; a bag to carry letters, &c.

MALA FIDES, bad faith; the opposite to *bona fides*, good faith. Questions of bad faith must be judged of by a jury. 1 East, 318.

Mala grammatica non vitiat chartam. Sed in expositione instrumentorum mala grammatica quoad fieri possit evitanda est. 6 Co. 39.—(Bad grammar does not vitiate a charter. But in the exposition of instruments, bad grammar, as far as it can be done, is to be avoided.)

MALA IN SE, wrongs of themselves; such as murder, robbery, perjury, &c.

MALA PRAXIS. If the health of an individual be injured by the unskilful or negligent conduct of a surgeon, or apothecary, or general practitioner, in assuming to heal a dislocated or fractured limb, or internal disorder, an action for compensation may be sustained (8 East, 348); or the wrong doer might be proceeded against by censure in the college, or, for gross negligence or misconduct he might be indicted.—*Com. Dig.* "*Physician.*" And if a medical practitioner, through ignorance or want of skill, should, in attempting to deliver a child, unnecessarily wound the same, and it be afterwards born alive, and then die of such wound, he will be guilty at least of manslaughter. *The King v. Long*, 4 C. & P. 398; *Rex v. Senior*, 1 Mood. Cr. C. 346.

MALA PROHIBITA, wrongs which are prohibited by human laws, but are not positively wrongs in themselves, as treason, forgery, playing at unlawful games, &c. This distinction, however, is extremely narrow, and could not be strictly and logically sustained.

MALANDRINUS, a thief or pirate.

MALARY, judicial, belonging to a Judge or magistrate. *Roberts' Indian Gloss.*

MALBERGE [*mons placiti*], a hill, where the people assembled at a court, like our assizes; which by the Scotch and Irish are called *parley hills*. *Du Cange*.

MALCONNA, a treasury or store-house in Hindoostan. *Rob. Ind. Gloss.*

MALECREDITUS, one of bad credit, who is not to be trusted. *Fleta*, l. 1, c. 38.

MALEDICTION, a curse, which was anciently annexed to donations of lands made to churches or religious houses, against those who should violate their rights.

Maledicta expositio quæ corrumpit textum. 4 Co. 35.—(It is a bad exposition which corrupts the text.)

MALEFACTION, a crime, an offence.

MALEFACTOR, an offender against law; a criminal.

Maleficia non debent remanere impunita; et impunitas continuum affectum tribuit delinquenti. 4 Co. 45.—(Evil deeds ought not to remain unpunished; and impunity affords continual excitement to the delinquent.)

Maleficia propositis distinguuntur. Jenk. Cent.

290.—(Evil deeds are distinguished from evil purposes.)

MALESON [*male*, Lat., evil; and *sonus*, a sound], a curse. *Bailey*.

MALESWORN or **MALSWORN**, forsworn.

MALETENT, a toll for every sack of wool.

MALFEASANCE, the commission of some unlawful act.

MALICE [*malitia*, Lat.], a formed design of doing mischief to another, technically called *malitia præcogitata*, or malice prepense. It is either *express*, as when one with a set and deliberate mind and formed design kills another, which formed design is evidenced by certain circumstances discovering such intention, as lying in wait, antecedent menaces, former grudges, and concerted schemes to do him some bodily harm; or *implied*, as where one wilfully poisons another; in such a deliberate act the law presumes malice, though no particular enmity can be proved. 4 *Step. Com.* 118.

MALICIOUS BURNING, the offence of arson.

MALICIOUS INJURIES, doing mischievous damage to private property, not with an intent to gain by another's loss, but out of a spirit of wanton cruelty or of deep revenge. The 7 & 8 Geo. IV., c. 30, consolidated and amended the laws relating to malicious injuries to property. The 7 Wm. IV. and 1 Vict., c. 89, provides for the unlawfully setting fire, &c., to ships and vessels. The 8 & 9 Vict., c. 44, relates to the malicious destruction of works of art, science, &c., in our public institutions.

MALICIOUS PROSECUTION, a proceeding by which a person's reputation is attempted to be wilfully destroyed.

The remedy given is by an action on the case for a false and malicious prosecution in which damages are recovered.

MALIGNARE, to malign or slander; also to maim.

MALITIA PRÆCOGITATA, malice aforethought.

Malitia est acida; est mali animi affectus. Buls. 49.—(Malice is sour; it is the quality of a bad mind.)

Malitia supplet ætatem. Dyer, 104 b.—(Malice supplies age.)

MALLUM and **MALLUS**. See **METHEL**.

MALO GRATO, in spite; unwillingly.

MALT MULNA, a quern or malt-mill.

MALT-SHOT or **MALT-SCOT**, certain payment for making malt.

MALUM IN SE. See **MALA IN SE**.

Malum hominum est obviandum. 4 Co. 15.—(The malice of men is to be avoided.)

Malum non habet efficientem, sed deficientem causam, 3 Inst. Proeme.—(Evil has not an efficient, but a deficient cause.)

MALUM PROHIBITUM. See **MALA PROHIBITA**.

Malum non præsumitur. 4 Co. 72.—(Evil is not presumed.)

Malum quo communius eo pejus.—(The more common an evil is, the worse.)

Malus usus est abolendus, quia in consuetudinibus, non diuturnitas temporis, sed soliditas rationis est consideranda. Co. Lit. 141.—(An evil custom is to be abolished, because, in customs, not length of time, but solidity of reason is to be considered).

MALVEILLES [*malvoillance*, Fr.], crimes and misdemeanors; malicious practices.

MALVEISA, a warlike engine to batter and beat down walls. *Mat. Par.*

MALVEISIN [*mauvait voisin*, Fr.], an ill neighbour.

MALVEIS PROCURORS, such as used to pack juries, by the nomination of either party in a cause, or other practice.

MALVERSATION, misbehaviour in an office, employ, or commission, as breach of trust, extortion, &c.

MAN, ISLE OF, an island in the Irish Sea off the coast of Cumberland, Westmoreland, and Lancashire.

This was formerly a distinct territory, but by 5 Geo. III., cc. 26 and 39, the whole island and all its dependencies, except the landed property, and some other rights belonging to the Athol family, are inalienably vested in the Crown, and subjected to the regulations of the British excise and customs. See 3 & 4 Wm. IV., c. 60, as to its trade regulations.

MANA, an old woman.

MANACLE [*manus*, Lat.], chain for the hands; shackles.

MANAGIUM, a mansion-house or dwelling-place.

MANBOTE, a compensation or recompense for homicide, particularly due to the lord for killing his man or vassal, the amount of which was regulated by that of the *wer*. *Anc. Inst. Eng.*

MANCA, **MANCUS**, or **MANCUSA**, a square piece of gold coin, commonly valued at 30 pence.

MANCEPS, a farmer of the public revenues; one who sold an estate with a promise of keeping the purchaser harmless; one that bought an estate by outcry; one who undertook a piece of work on giving security for the performance. *Roman Term.*

MANCIPLE [*manceps*], a clerk of the kitchen or caterer, especially in colleges.

MANCHE-PRÉSENT, a bribe; a present from the donor's own hand.

MANCIPATE, to enslave; to bind; to tie.

MANCIPATIO. Every father, in the Roman law, had such an authority over his son, that, before the son could be released from his subjection and made free, he must be twice sold and bought, his natural father being in the first instance the vendor. The vendee was called *pater fiduciarius*. After this fictitious bargain, the *pater fiduciarius* sold him again to his natural father, who could then, but not till then, manumit or make him free. The imaginary sale was called *mancipatio*; and the act of giving liberty, or setting him free, was called *emancipatio*.

Also, the selling or alienating of certain

lands by the balance or money paid by weight, and in the presence of five witnesses. This mode of alienation took place only among Roman citizens, and that only in respect to certain estates situated in Italy, which were called *mancipia*. *Encyc. Lond.*

MANDAMUS (we command), a high prerogative writ of a most extensive remedial nature, and is in its form a command issuing in the Queen's name from the Court of Queen's Bench only of which it is the principal flower (except a *mandamus* to examine witnesses in India, &c., under 1 Wm. IV., c. 22, § 1, which may be awarded by any of the three superior courts of common law), and addressed to any person, corporation, or inferior court of judicature within the Crown's dominions, requiring them to do some particular thing therein specified, which appertains to their office and duty, and which the Court of Queen's Bench has previously determined, or at least supposes to be consonant to right and justice.

It is used principally for public purposes, and to enforce performance of public rights or duties. It enforces, however, some private rights when they are withheld by public officers.

It is a general rule that this writ is only to be issued where a party has no other specific remedy; and he applies to the court without delay to induce the court to interfere, there must be not only a specific legal right, but also the absence of any other specific legal remedy. The jurisdiction is to be exercised with great caution, because it is altogether in the discretion of the court, and no writ of error lies upon it.

Arbitrations and awards, when under public acts, may be enforced by *mandamus*, and overseers and public officers may be compelled to deliver up parish books, &c., to their successors. Burial may be enforced by *mandamus*, and also the statement of a special case, when the sessions have agreed that there should be a case. It will lie to compel justices to set out evidence in their convictions, in pursuance of the 3 Geo. IV., c. 23, § 1, and generally to perform their duties. Also, to compel lords of manors to admit copyholders, and corporations to fill up vacant offices. So it lies to compel an ecclesiastical Judge to grant probate to the executor named in the will, or letters of administration to the next of kin.

The application for a *mandamus* must be made in every case within a reasonable time after the occurrence of the event, entitling the applicant to this remedy; but before applying to the court, notice should be given of the claim which it is proposed to enforce; and in cases relative to corporations, it is expressly enacted, by 12 Geo. III., c. 21, that when any person claims to be admitted a citizen, burgess, or freeman, he shall give notice specifying the nature of his claim, and stating that within one month the court will be applied to; and after such notice the claimant shall be entitled to his costs. The

application is founded on the affidavit of the person injured, and should disclose the right of the applicant, and show how he has been injured. When the application is concerning a corporate right, and the corporation is by prescription, the constitution of the corporation, or so much as shows the right of the party claiming, must be stated in the affidavit; and it is sometimes necessary to annex a verified copy of the charter of incorporation. When the writ is required to enforce admission or restoration to an office, the affidavit should explicitly state the nature of the office claimed, and show that it is of a public nature. The affidavit should also disclose the grounds on which it is supposed the claim is resisted, and anticipate such objections or arguments, in fact, as it is expected will be advanced in opposition to the application. A copy of the notice previously served should be annexed and verified, and the service sworn to. The application is sometimes for a rule to show cause why the writ should not issue, and sometimes for a rule absolute in the first instance. It is absolute, in the first instance, to enforce obedience to acts of Parliament, charters, or letters patent; but in matters of a private nature, it is in the discretion of the court either to grant or refuse to grant the writ, or to grant a rule to show cause why the writ should not issue. It is usual to grant a rule *nisi* only, unless some public injury or inconvenience is likely to arise from the delay. When a rule *nisi* is granted, it is drawn up and entered by the clerk of the rules at the Crown Office; and, if practicable, a copy served personally on the party or parties to whom it is addressed. If no cause be shown, the rule is made absolute, as of course; if cause shown, it will then depend upon the circumstances and merits of the contending parties. The writ issues from the Crown Office. There should be fourteen days—one exclusive and one inclusive—between the test and return of the writ; but if it be to be executed within forty miles of Westminster, eight days are sufficient. It is always returnable on a day certain in term. The original writ should be served personally on the party to whom it is directed, and when there are several parties, a copy should be served upon each, at the same time showing the original, and the original should afterwards be served on the principal party, in order that it may be returned.

If the person to whom the writ is directed makes no return, he is punishable for his contempt by attachment. If, however, he make a return, which is either insufficient in law or false in fact, there then issues, in the second place, a peremptory *mandamus* to do the thing absolutely, to which no other return will be admitted but a certificate of perfect obedience and due execution of the writ.

By 1 Wm. IV., c. 21, it is enacted, that in all cases of *mandamus*, the return may be pleaded to or traversed by the prosecutor,

and his antagonist may reply, take issue, or demur, and the same proceedings may be had as if an action on the case had been brought for making a false return; and after judgment obtained for the prosecutor, he shall have a peremptory writ of mandamus to compel his admission or restitution, which latter, in case of an action, is effected by a writ of restitution. By 6 & 7 Vict., c. 67, the prosecutor, objecting to the validity of the return, shall do so by way of demurrer, in like manner as in personal actions. By 6 & 7 Vict., c. 89, § 5, it is provided, in regard to offices and boroughs under the Municipal Corporation Act, that ten days' notice to the opposing party may be given by the party making application for such remedy, and that thereupon cause may be shown, and the rule made absolute in the first instance; and if the court think proper, a peremptory mandamus may be issued in the first instance. And see 1 & 2 Wm. IV, c. 58, § 8; 3 Step. Com. 681; *Bagley's Prac.* 545; *Gude's Crown Prac.*; and *Impey on Mandamus*.

MANDATARY, he to whom a charge or commandment is given; also, he that obtains a benefice by mandamus.

Mandata licita, strictam recipiunt interpretationem, sed illicita, latam et extensam. Bacon. —(Lawful commands receive a strict interpretation, but unlawful, a wide, broad interpretation.)

Mandarius terminos sibi positos transgredi non potest. Jenk. Cent. 53.—(A mandatory cannot exceed the bounds placed upon himself.)

MANDATE, a judicial command, charge, commission.

Also, a bailment of goods, without reward, to be carried from place to place, or to have some act performed about them. The person employing is called in the civil law *mandant* or *mandator*, and the person employed *mandatarius* or mandatory.

The distinction between a mandate and a deposit is, that in the latter, the principal object of the parties is the custody of the thing; and the service and labour are merely accessorial. In the former, the labour and service are the principal objects of the parties, and the thing is merely accessorial.

Three things are necessary to create a mandate; 1, that there should exist something which should be the subject of the contract, or some act or business to be done; 2, that it should be to be done gratuitously; 3, that the parties should voluntarily intend to enter into the contract.

A mandatory incurs three obligations: 1, to do the act which is the object of the mandate, and with which he is charged; 2, to bring to it all the care and diligence that it requires; 3, to render an account of his doings to the mandator.

A mandator contracts to reimburse a mandatory for all expenses and charges reasonably incurred in the execution of the

mandate, and also to indemnify him for his liability on all contracts which arise incidentally in the proper discharge of his duty.

The contract of mandate may be dissolved either by the renunciation of the mandatory at any time before he has entered upon its execution, or by his death; for, being founded in personal confidence, it is not presumed to pass to his representatives, unless there is some special stipulation to that effect. But if the mandate be partly executed, there may, in some cases, arise a personal obligation on the part of the representatives to complete it. *Story's Bailments*, c. iii.

In the canon law, a rescript of the pope, by which he commands some ordinary collator or presentor to put the person there nominated in possession of the first benefice vacant in his collation.

Royal mandates to Judges for interfering in private causes, constituting a branch of the royal prerogative, which was given up by Edward I. And the 1 W. & M., st. 2, c. 2, declared, that the pretended power of suspending or dispensing with laws, or the execution of laws by regal authority, without consent of Parliament, is illegal.

MANDATI DIES, Maundy Thursday.

MANDATO, PANES DE, loaves of bread given to the poor upon Maundy Thursday.

MANDATOR, director. See **MANDATE**.

MANDATORY, preceptive; directory.

MANDATUM, a fee or retainer given by the Romans to the *procuratores* and *advocati*. *Mandatum* is sometimes used in the sense of a command from a superior to an inferior.

MANDAVI BALLIVO (I have commanded the bailiff). If a bailiff of a liberty have the execution and return of a writ, the sheriff may return that he commanded the bailiff to execute the writ; and if the bailiff have not made a return, the sheriff should return that fact accordingly (*mandavi ballivo, qui nullum dedit responsum*); or if he have made a return the sheriff should return it. *Chit. Arch. Prac.* 412.

MANENTES [*maneo*, Lat., to continue], tenants. *Obsolete*.

Munerium dicitur à manendo, secundum excellentiam, sedes magnæ, fixa et stabilis. Co. Lit. 58.—(A manor is called from "*manendo*," a seat, according to its excellence, great, fixed, and firm.)

MANGONARE, to buy in a market.

MANIA A POTU, otherwise denominated *delirium tremens*, a disease induced from the intemperate use of spirituous liquors, or certain other diffusible stimuli.

MANIFESTO or **MANIFEST**, a public declaration made by a prince, in writing, showing his intentions to begin a war or other enterprise, with the motives that induce him to it, and the reasons on which he founds his rights and pretensions. *Encyc. Lond.*

In commercial navigation, a document signed by the master, containing the name

or names of the places where the goods on board have been laden, and the place or places for which they are respectively destined, the name and tonnage of the vessel, the name of the master, and the name of the place to which the vessel belongs; a particular account and description of all the packages on board, with the marks and numbers thereon, the goods contained in such packages, the names of the respective shippers and consignees, as far as such particulars are known to the master. A separate manifest is required for tobacco. The manifest must be made out, dated, and signed by the captain, at the place or places where the goods, or any part of the goods, are taken on board. *McCulloch's Comm. Dict.*

Manifesta probatione non indigent. 7 Co. 40.—(Things manifest do not stand in need of proof.)

MAN-KILLER, a murderer.

MANNER, act; as to take a thief in the act of stealing.

MANNING, a day's work of a man.

MANNIRE, to cite any person to appear in court and stand in judgment there; it is different from *bannire*; for both of them are citations; this is by the adverse party, and that is by the Judge. *Du Cange.*

MANNOPUS, goods taken in the hands of an apprehended thief. *Cowell.*

MANNUS, a horse.

MANOR [*manerium*, Lat., *manoir*, Fr., habitation, or *manendo*, of abiding there, because the lord usually resided there], a noble sort of fee, granted partly to tenants for certain services to be performed, and partly reserved to the use of the lord's family. The *tenementales* were granted out; the *dominicales* were reserved to the lord; the whole fee was termed a lordship or barony; and the court appendant to the manor the Court Baron. See COPYHOLD.

MAN-QUELLER [*man*, and *cwellan*, Sax.], a murderer.

MANRENT, a kind of bond between lord and vassal, by which protection was stipulated on the one hand, and fidelity with personal service on the other. *Rob. Scot. b. i.*

MANSA or MANSUM, a mansion or house. *Spelm.*

MANSE, a house or habitation, either with or without land.

MANSE or MANSUM PRESBYTERI, a parsonage or vicarage-house: sometimes called *presbyterium*.

MANSER, a bastard. *Cowell.*

MANSION, the lord's house in a manor.

MANSION-HOUSE, an inhabited house.

MANSLAUGHTER, the unlawful killing of another without malice express or implied. It is either—

(a) Voluntary, upon a sudden heat, or

(β) Involuntary, upon the commission of some unlawful act.

Both are felony; and punished, at the discretion of the court, by transportation for life, or not less than seven years, or by im-

prisonment, with or without hard labour, for any term not exceeding four years, or by paying a fine. 9 Geo. IV., c. 31, § 9.

MANSLAYER, a murderer.

MANSTEALER, a kidnapper.

MANSUM CAPITALE, the manor-house, or lord's court.

MANSURA, the habitation of people in the country.

MANSUS, a farm.

MANTEA, a long robe or mantle. *Old Records.*

MANTHEOFF [*mannus*, Lat., a nag, and *theoff*, Sax., a thief], a horse-stealer. *Leg. Alf.*

MANTICULATE, to pick pockets. *Bailey.*

MAN-TRAP, engines to catch trespassers, now unlawful, unless set in a dwelling-house for defence, between sunset and sunrise. 7 & 8 Geo. IV., c. 18, § 1.

MANUALIA BENEFICIA, the daily distributions of meat and drink to the canons and other members of cathedral churches for their present subsistence.

MANUALIS OBEDIENTIA, sworn obedience or submission upon oath.

MANUCAPTIO, a writ that lay for a man taken on suspicion of felony, &c., who cannot be admitted to bail by the sheriff or others having power to let to mainprise. *F. N. B.* 249.

MANUCAPTOR, one who stands bail for another.

MANUFACTURE, anything made by art. As to a patent for a manufacture, see LETTERS PATENT.

MANUMISSION, the act of giving freedom to slaves.

Among the Romans it was performed in three several ways: 1st, when, with his master's consent, a slave had his name entered in the census or public register of the citizens; 2d, when the slave was led before the prætor, and that magistrate laid his wand (*vindicta*) on his head; 3d, when the master, by his will, gave his slave freedom.

Among us, in the time of the Conqueror, villeins were manumitted by their master delivering them by the right hand to the viscount in full court, showing them the door, giving them a lance and a sword, and proclaiming them free. Others were manumitted by charter. There was also an implied manumission, as when the lord made an obligation for payment of money to the bondman at a certain day, or sued him where he might enter without suit, and the like. *Encyc. Lond.*

Manumittere, idem est quod extra manum vel potestatem ponere. Co. Lit. 137.—(To set free, is the same as to place beyond hand and power.)

MANUNG or MONUNG, the district within the jurisdiction of a reeve, apparently so called from his power to exercise therein one of his chief functions, viz., to exact (*amanian*) all fines. *Anc. Inst. Eng.*

MANU OPERA, cattle or implements of husbandry; also, stolen goods taken from a thief caught in the fact.

MANUPASTUS, a domestic; perhaps the same as *klafeta*. *Anc. Inst. Eng.*

MANUPES, a foot of full and legal measure.

MANUS, an oath, from the ceremony of laying the hand on the book; also, the person taking an oath or compurgator.

Manus mortua, quia possessio est immortalis, manus pro possessione et mortua pro immortalis. Co. Lit. 2.—(Mortmain (dead hand), because it is an immortal possession; *manus* stands for possession, and *mortua* for immortal.)

MANUS MEDIÆ, or INFIMÆ HOMINES, men of a mean condition, or of the lowest degree.

MANUTENENTIA, the old writ of maintenance. *Reg. Orig.* 182.

MANWYRTH, the value or price at which a man is estimated, according to his degree; apparently synonymous with *wer-geld*. It occurs only in the laws of Hlothhære and Eadric. *Anc. Inst. Eng.*

MARA, a mere, lake, or great pond, that cannot be drawn dry. *Par. Antiq.* 418.

MARCATUS, the rent of mark by the grant anciently reserved in leases, &c.

MARCHERS or LORD MARCHERS, those noblemen who lived on the marches of Wales and Scotland, who, in times past, had their laws and regal power, until they were abolished by 27 Hen. VIII., c. 26.

MARCHES, the boundaries of countries and territories; the limits between England, Wales, or Scotland. Also, in Scotland, the boundaries between private properties.

MARCHES, Court of, an abolished tribunal in Wales, where pleas of debt or damages, not above the value of 50*l.*, were tried and determined. *Cro. Car.* 384.

MARCHET or MARCHETTA, a pecuniary fine, anciently paid by the tenant to his lord for the marriage of one of the tenant's daughters. This custom obtained, with some difference, throughout all England and Wales, as also in Scotland; and it still continues to obtain in some places. It is also denominated *gwahr-merched*, i. e., maid's fee.

MARCHIONESS [formed by adding the English female termination to the Latin *marchio*], a dignity in a woman answerable to that of marquess in a man, conferred either by creation, or by marriage with a marquess.

MARESHALL, or MARESHAL, a marshal.

MARETUM [*maret*, Fr., a fen or marsh], marshy ground overflowed by the sea or great rivers. *Co. Lit.* 5.

MARINARIUS, a mariner or seaman.

MARINARIORUM CAPITANEUS, an admiral or warden of the ports.

MARINE, a general name for the navy of a kingdom or state; as also the whole economy of naval affairs, or whatever respects the building, rigging, arming, equipping, navigating, and fighting ships. It comprehends also the government of naval armaments, and the state of all the persons em-

ployed therein, whether civil or military.

Also, a soldier in the sea-service.

MARINE INSURANCE. See **INSURANCE**.

MARINE SOCIETY, a charitable institution for the purpose of apprenticing boys to the naval service, &c., incorporated by 12 Geo. III., c. 67.

MARISCHAL, an officer in Scotland, who, with the Lord High Constable, possessed a supreme itinerant jurisdiction in all crimes committed within a certain space of the court, wherever it might happen to be.

MARISCUS, a marshy or fenny ground. *Domesday*.

Maris et fœminæ conjunctio est de jure naturæ. 7 Co. 13.—(The connection of male and female is by the law of nature.)

MARITAGIO AMISSO PER DEFALTAM, an obsolete writ for the tenant in frank-marriage to recover lands, &c., of which he was deforced.

MARITAGIUM, the portion which is given with a daughter in marriage. Also, the power which the lord or guardian in chivalry had of disposing of his infant ward in matrimony. *Spelm.*

Maritagium est aut liberum aut servitio obligatum; liberum maritagium dicitur ubi donator vult quod terra sic data quæta sit et libera ab omni seculari servitio. Co. Lit. 21.—(A marriage portion is either free or bound to service; it is called frank-marriage when the giver wills that land thus given be exempt from all secular service.)

MARITAGIUM HABERE, or MARITARE, to have the free disposal of an heiress in marriage.

MARITAL [*maritus*, Lat.], pertaining to a husband; incident to a husband.

MARITATED, having a husband.

MARITIMA ANGLIÆ, the profit and emolument arising to the Crown from the sea, which anciently was collected by sheriffs; but it was afterwards granted to the Lord High Admiral. *Par. 8 Hen. III.*, m. 4.

MARITIME CAUSES, those injuries which are committed on the high seas. 5 & 6 Wm. IV., c. 19, § 14.

MARITIME COURTS, the Court of Admiralty and its court of appeal, the Judicial Committee of the Privy Council. The courts of Vice-Admiralty are established in Her Majesty's possessions beyond the seas, with jurisdiction over maritime causes, including those relating to prize. By 2 Wm. IV., c. 51, it is enacted, that in all cases where a ship comes within the local limits of a court of Vice-Admiralty, suits may be commenced therein for "seamen's wages, pilotage, bottomry, damage to ship by collision, breach of regulations of the royal service at sea, salvage, and droits of admiralty," notwithstanding the cause of action may have arisen out of the local limits of such court.

MARITIME LAW, the law relating to harbours, ships, and seamen. It forms an important branch of the commercial law of all maritime nations. It is divided into a variety

of different departments, such as those with respect to harbours, the property of ships, the duties and rights of masters and seamen, contracts of affreightment, average, salvage, &c. No system or code of maritime law has ever been issued by authority in Great Britain. The laws and practices that now obtain amongst us in reference to maritime affairs, have been founded principally on the practices of merchants, the principles laid down in the civil law, the laws of Oleron and Wisby, the works of distinguished juriconsults, the judicial decisions of our own and foreign countries, &c. A law so constructed has necessarily been in a progressive state of improvement, and, though still susceptible of amendment, it corresponds at this moment, more nearly, perhaps, than any other system of maritime law, with those universally recognised principles of justice and general convenience by which the transactions of merchants and navigators ought to be regulated.

The decisions of Lord Mansfield did much to fix the principles and to improve and perfect the maritime law of England. It is also under great obligations to Lord Stowell. The decisions of the latter, chiefly, indeed, respect questions of neutrality, growing out of the conflicting pretensions of belligerents and neutrals during the late war; but the principles and doctrines which he unfolds in treating those questions, throw a strong and steady light on those branches of maritime law. It has occasionally, indeed, been alleged—and the allegation is probably, in some degree, well founded—that his lordship has conceded too much to the claims of belligerents. Still, however, his judgments must be regarded, allowing for this excusable bias, as among the noblest monuments of judicial wisdom of which any country can boast. "They will be contemplated," says Mr. Serjeant Marshall (*Insur. Prel. Disc.*), "with applause and veneration, as long as depth of learning, soundness of argument, enlightened wisdom, and the chaste beauties of eloquence, hold any place in the estimation of mankind." *McCulloch's Comm. Dict.*

MARITIME STATE consists of the officers and mariners of the British navy, who are governed by express and permanent laws, or the articles of the navy, established by act of Parliament.

MARK [*marc*, Welsh, *mearc*, Sax., *merche*, Dut., *marque*, Fr.], a token; an impression; a proof; an evidence; licence of reprisals; also, a sum of 13s. 4d.

In commerce and manufacture, a certain character struck or impressed on various kinds of commodities, either to show the place where they were made, and the persons who made them; or to witness that they have been viewed and examined by the officers charged with the inspection of manufactures; or to show that the duties imposed thereon have been paid. It is also used to indicate the price of a commodity. If one use the mark of another, to do him damage, an action on the case will lie. 2 Cro. 471.

Those who are unable to write, sign a cross for their mark, when they execute any document.

MARKET [anciently written *mercat*, from *mercatus*, Lat.], a public time and appointed place of buying and selling; also purchase and sale. It differs from the *forum*, or market of antiquity, which was a public market place on one side only, or during one part of the day only, the other sides being occupied with temples, theatres, courts of justice, and other public buildings.

A market can only be set up by virtue of a royal grant, or by long and immemorial usage, which presupposes a grant.

All contracts for anything vendible in fairs or markets overt shall be binding, if made according to the following rules:—1. the sale is to be in a place that is open, so that any one who passes by may see it, and be in a proper place for such goods; 2. it must be an actual sale for a valuable consideration; 3. the buyer is not to know that the seller has a wrongful possession for the goods sold; 4. the sale must not be fraudulent between two to bar a third person of his right; 5. there is to be a sale and a contract by persons able to contract; 6. the contract must be originally and wholly in the market overt; 7. toll ought to be paid where required by statute; 8. the sale ought not to be in the night, but between sun and sun; though, if the sale be made in the night, it may bind the parties. 5 Rep. 83.

MARKET, CLERK OF THE, *Court of*, a tribunal incident to every fair and market in the kingdom, to punish misdemeanors therein; as a court of *pied poudre* is to determine all disputes relating to private or civil property. The object of this, the most inferior criminal jurisdiction, is principally the recognizance of weights and measures, to try whether they be according to the true standard thereof or not, which standard was anciently committed to the custody of the bishop, who appointed some clerk under him to inspect the abuse of them more narrowly; and hence this officer, though usually a layman, is called the clerk of the market.

The 5 & 6 Wm. IV., c. 63, has superseded its functions as regards weights and measures, and enacts, that inspectors or examiners of weights and measures shall be appointed, who shall attend with the stamps and copies of the imperial standard weights in their custody at each of the several market towns, and examine and stamp, if found correct, such weights and measures as shall be brought to them for that purpose, and give, if required, a certificate of such stamping, and that it shall be lawful for any magistrate or authorised inspector, to enter, at all reasonable times, any shop or other place where goods are exposed for sale, in order to examine the weights and measures, and if found incorrect, such weights and measures shall be liable to be seized and forfeited, and

the person in whose possession the same shall be found, or who shall obstruct such examination, shall be liable to a penalty of five pounds.

MARKET GELD, the toll of a market.

MARKET OVERT, an open market.

MARKET TOWNS, those towns which are entitled to hold markets.

MARKETABLE, such as may be sold; such for which a buyer may be found.

MARKETZELD. See **MARKET GELD**.

MARKEPENNY, a penny anciently paid at the town of Maldon by those who had gutters laid or made out of their houses into the streets. 15 *Edw. I.*

MARKSMAN, a person who cannot write, and therefore makes his mark only in executing instruments; another writing his name opposite to such mark.

MARQUE [*mearc*, Sax., *signum*, Lat.], a mark, a sign; reprisals. See **LETTER OF MARQUE**.

MARQUIS or **MARQUESS** [*marquis*, Fr., *marchio*, Lat., *margrave*, Ger.], one of the second order of nobility, next in order to a duke. The first marquis was John de Beaufort, son of John of Gaunt, whom Richard II., in the twenty-first year of his reign, made Marquis of Dorset. The first and last woman that was created a marquess was the Lady Ann Bolein, and then the spelling *marquess* seems to have been considered a feminine term.

The general style of a marquis is "most high and mighty prince," and he is stiled by the sovereign "our right-trusty and entirely-beloved cousin." His title is "most honourable;" and his sons, by courtesy, are stiled lords, and his daughters ladies.

The word, according to some authors, comes from the *Marcomanni*, an ancient people who inhabited the marshes of Brandenburg. Others derive it from the German *marche*, limit; and others from *marcia*, which, in the Celtic language, signifies a wing of cavalry. Nicod derives it from the corrupt Greek *μουαρχία*, a province. Alciat and Pauchet bring it from *marc*, a horse, taking a marquis to be properly an officer of horse. Menage derives it from *marca*, a frontier; and Selden, Krantzius, and Hottoman, do the same. Pasquier, from the old French *marche*, or from *mar-chir*, to confine, the guard of the frontiers being committed to them. *Encyc. Lond.*

MARQUISATE, the seigniorship of a marquis.

MARRIAGE [*maritagium*, low Lat.], a solemn contract, dictated by nature, and instituted by Providence, whereby a man is united to a woman for the lawful purposes of civilized society. The common law treats this contract as a civil institution, and, therefore, it deems it to be good and valid, where it is entered into by persons willing and able to contract, and who actually did contract, according to the solemnities established by law. Each party must exercise free-will in entering into this contract, for it is the consent, and not the mere union of the parties, which

constitutes the marriage. The parties must also be able to contract, *i. e.*, they must not labour under any disability. The disabilities are of two kinds, civil and canonical. We will first state the civil disabilities which are enforced by the municipal or common law.

1. A prior marriage, or having another husband or wife living; for a second marriage, under such circumstances, is absolutely void; besides, it is a felony for a man or woman to marry, he or she having a wife or husband living, which is called bigamy, and is punishable by imprisonment or transportation.

Bigamy, or (as it is frequently termed) polygamy, is condemned by the injunctions of the Christian religion.

2. Want of age. The age for consent to matrimony is fourteen in males and twelve in females. If a marriage be solemnized under these ages, it is not absolutely void, but only imperfect; and either of them, upon attaining to their respective ages of consent, may declare the marriage void, or agree to continue together; in the former case a divorce would not be necessary, and in the latter another marriage ceremony would not be requisite. It is to be observed that a promise to marry *in futuro* is not binding if the party be not twenty-one years of age; but where there are mutual promises to marry between two persons, one of whom is of the age of twenty-one, and the other under that age, the adult is bound by the promise, but the minor is not, and if the adult break the promise, the minor may maintain an action on the breach, in order to recover damages; but if the minor break the promise, no action can be maintained upon it by the adult.

3. Want of consent of parents or guardians. The statute 4 Geo. IV., c. 76, makes this consent directory only, and the want of it will not invalidate the marriage. The consent required is either of the father, or, if the father be dead, then of a guardian lawfully appointed, if there be no guardian, then of the mother, being unmarried, and if there be no mother unmarried, then of any guardian appointed by the Court of Chancery. But where the person whose consent is required, is *non compos mentis*, or where such person, being the guardian or the mother, is abroad, or the consent to a proper marriage is unreasonably, or from undue motives, withheld, the Lord Chancellor, upon petition, has power to give relief. If the marriage is by the publication of banns, and the party whose consent is required, dissent from the marriage, he or she attends the church and states his objection immediately after the banns are published by the minister, who will request the attendance of the dissenting party in the vestry room, after the conclusion of divine service, when the sufficiency of the objection will be decided upon by the minister; and if the objection be valid, the publication of the banns will be void; but if the objection be

invalid, the marriage will be duly solemnized. If a marriage be about to be effected by license, and there is an objection to the same, the person whose consent is required, enters a *caveat* against the granting a license with the master of the faculties, before whom a discussion will take place upon it, and he will decide the question according to his discretionary jurisdiction. It is to be observed, that if the minor be a widow or widower, no consent is necessary, since he or she would be then deemed emancipated.

4. Want of reason. The marriage of a lunatic, if it be not solemnized during a lucid interval, is void *ab initio*. The statute 15 Geo. II., c. 30 (confirmed and extended to Ireland by 51 Geo. III., c. 37), provides, that the marriage of lunatics, and persons under phrenzies (if found lunatics under a commission, or committed to the care of trustees by any act of Parliament), before they are declared of sound mind by the Lord Chancellor, or the majority of such trustees, shall be totally void.

5. Proximity of relationship, i. e., being within the prohibited degrees of consanguinity or affinity.

Consanguinity comprehends those related to a person by blood; they are either lineal or collateral consanguinity, which will be presently explained; affinity comprehends those related by marriage.

This disability was, till lately, a canonical incapacity only; but the statute 5 & 6 Wm. IV., c. 54, has made it a civil disability also, by enacting that all marriages, celebrated between persons within the prohibited degrees of consanguinity or affinity, shall be absolutely void for all purposes whatever. The marriages which are now illegal in respect of proximity of degree, are the following:—those between persons in the ascending and descending line, *in infinitum*. The ascending and descending lines form what is called lineal consanguinity, as son, father, grandfather, great grandfather, and so upwards, in the right ascending line, and son, grandson, great grandson, &c., in the direct descending line. Every generation, in lineal consanguinity, whether in the ascending or descending line, constitutes a degree, thus:—a man's father and his son are related to him in the first degree, his grandfather and grandson in the second, his great grandfather and great grandson in the third degree, and so on.

Marriages, also, between collaterals to the third degree inclusive, according to the mode of computation in the civil law, are prohibited. Collateral consanguinity agree with the lineal in this, that they both descend from a common ancestor, but they do not descend from one another, as brothers, uncles, nephews, &c. A man's parents rank as the first degree in collaterals; his brothers and sisters, grandfather and grandmother, in the second degree; and his uncles, aunts, nephews, and nieces, in the

third degree. The prohibition as to collaterals extends not only to consanguinity, but also to affinity. Cousins german, or first cousins, being in the fourth degree of collaterals, may marry; a nephew and great aunt, or niece, and great uncle, are also in the fourth degree, and may intermarry; and although a man may not marry his grandmother, he can, if he like, marry his grandmother's sister. But a man can marry neither his sister nor his wife's sister, for both are related to him in the second degree; nor his sister's daughter, nor wife's sister's daughter, for both are in the third degree; but he may marry his first cousin, for both are in the fourth degree. Though the consanguinity of the wife are always related by affinity to the husband, and *vice versa*, yet the consanguinity of the husband are not at all necessarily related to the consanguinity of the wife; hence two brothers may marry two sisters, or father and son may marry mother and daughter. If a brother and sister marry two persons not related, and the brother and sister die, the widow and widower may intermarry, for, though a man is related to his wife's brother by affinity, he is not so to his wife's brother's wife, whom, if other circumstances will admit, it would not be unlawful for him to marry. This prohibition as to collaterals extends also to the relations of the half blood, as well as to the whole blood, and that it also applies, though one of the parties be a bastard; for though, as to many civil consequences, a bastard is deemed *nullius filius*, the law recognises his relationship to his natural parents for moral purposes.

We will now notice the canonical disabilities which, by the municipal or common law, only make the marriage voidable, and not *ipso facto* void, until sentence of nullity be pronounced in the spiritual courts. These disabilities are the following:

1. Some particular corporal infirmities, as an inability at the time of the marriage to procreate children.

2. Consanguinity or affinity, which have been remarked upon, and formerly

3. Precontract with another party; but this is no longer a disability. See 4 Geo. IV., c. 76, § 27.

It is to be observed, that sentence of nullity must be pronounced upon these disabilities during the life of the parties; for after the death of either of them the courts of common law will not suffer the ecclesiastical courts to declare such marriages to have been void, because such a declaration could not then tend to the reformation of the parties.

Marriage is dissolved—1. by death; 2. by divorce; 3. by act of Parliament. See *A MENSA ET THORO*; *A VINCULO MATRIMONII*; and *HUSBAND AND WIFE*.

Our doctrine, in relation to Scotch marriages, by parties domiciled in England, and going to Scotland to marry, though a plain violation of the real object and intent, even

if not of, the words of the Marriage Act, seems to have proceeded mainly upon the ground of public policy.

The general principle is, that between persons *sui juris*, marriage is to be decided by the law of the place where it is celebrated. If valid there, it is valid everywhere; it has a legal ubiquity of obligation. If invalid there, it is equally invalid everywhere.

But a question may sometimes occur, what is to be deemed, in the proper sense of the rule, the true matrimonial domicile? Is it the place where the actual marriage is celebrated? or that where the parties are domiciled, if the marriage is elsewhere? Or if the husband or wife have different domiciles, whose is to be regarded? These and many other perplexing inquiries may be raised; and foreign jurists have not passed them over without examination.

Where the place of domicile of both the parties is the same with that of the contract and the celebration of the marriage, no difficulty can arise. The place of celebration is clearly then the matrimonial domicile. But let us suppose that neither of the parties has a domicile in the place where the marriage is celebrated; but it is a marriage *in transitu*, or during a temporary residence, or on a journey made for that sole purpose, *animo revertendi*—what is then to be deemed the matrimonial domicile?

The principle maintained by foreign jurists in such cases is, that with reference to personal rights and rights of property, the actual or intended domicile of the parties is to be deemed the true matrimonial domicile; or, to express the doctrine in a still more general form, they hold that the law of the place where, at the time of marriage, the parties intend to fix their domicile, is to govern all the rights resulting from the marriage. Hence, they would answer the question proposed by stating, that in such a case the law of the actual domicile of the parties is to govern, and not the place of the marriage *in transitu*. *Story's Conf. of Laws*, c. vi.

The ancient Greek legislators considered the relation of marriage as a matter not merely of private, but also of public or general interest. This was particularly the case at Sparta, where the subordination of private interests and happiness to the real or supposed exigencies of the state was strongly exemplified in the regulations on this subject. For instance, by the laws of Lycurgus, criminal proceedings might be taken against those who married too late (*γραφή ὀψιγαμίου*), or unsuitably (*γραφή κακογαμίου*), as well as against those who did not marry at all (*γραφή ἀγαμίου*). These regulations were founded on the generally recognised principle, that it was the duty of every citizen to raise up a strong and healthy progeny of legitimate children to the state. So entirely, in fact, did the Spartans consider the (*τεκνοποία*), or the production of children, as the main object of marriage, and an object

which the state was bound to promote, that whenever a woman had no children by her own husband, she was not only allowed, but even required by the laws to cohabit with another man. *Xen. de Rep. Lac.* i. 8.

The consequences of marriage among the Romans were—1. The power of the father over the children of the marriage, which was a completely new relation, an effect indeed of marriage, but one which had no influence over the relation of the husband and wife. 2. The liabilities of either of the parties to the punishments affixed to the violation of the marriage union. 3. The relation of husband and wife with respect to property, to which head belong the matters of *Dos*, *Donatio inter virum et uxorem*, *Donatio propter nuptias*, &c. Many of these matters, however, are not necessary consequences of marriage, but the consequences of certain acts which are rendered possible by marriage. The Roman notion of marriage was that of a complete personal unity of the husband and wife (*consortium omnis vitæ*), as shown by a continuous cohabitation, the evidence of continuing consent; for the dissent of either party, when formally expressed, could dissolve the relation. Neither in the old Roman law, nor in its later modifications, was a community of property an essential part of the notion of marriages, unless we assume, that originally all marriages were accompanied with the *conventio in manum*, for, in that case, the wife became *filiae-familias loco*, and passed into the *familia* of her husband; or if her husband were in the power of his father, she became to her husband's father in the relation of a grand-daughter. The legal deduction from this is, that her legal personality was merged in that of her husband, all her property passed to him by a universal succession (*Gaius* ii. 96, 98); and she could not thenceforward acquire property for herself. Thus she was entirely removed from her former family as to her legal *status*, and became as the sister to her husband's children. In other words, when a woman came *in manum*, there was a blending of the matrimonial and the filial relation. The position of a Roman woman, after marriage, was very different from that of a Greek woman. The Roman presided over the whole household; she educated her children, watched over and preserved the honour of the house, and, as the *mater-familias*, she shared the honours and respect shown to her husband. Far from being confined, like the Greek women, to a distinct apartment, the Roman matron, at least, during the better centuries of the republic, occupied the most important part of the house, the *atrium*. *Smith's Dict. of Antiq.*

Marriage among the Hebrews is a matter of strict obligation, for they understand literally and as a precept the words uttered to our first parents, *Gen.* i. 28.

MARRIAGE ACTS, 4 Geo. IV., c. 76, and 6 & 7 Wm. IV., c. 85.

The 4 Geo. IV., c. 76, directs that all the rules prescribed by the rubric, prefixed to the office of matrimony in the Book of Common Prayer, shall be duly observed, and prescribes, in conformity with the canons of the church, the previous publication of banns, or in lieu thereof, a license from the ecclesiastical authority to marry without banns. It also requires that the marriage should be in a church or public chapel, wherein banns may be lawfully published, and take place between eight and twelve in the forenoon, except in the case of a special license, and be solemnized by a person in holy orders.

The 6 & 7 Wm. IV., c. 85, for the relief of Dissenters, which was amended by 7 Wm. IV. and 1 Vict., c. 22, and 3 & 4 Vict., c. 72, has introduced new regulations, which provide that the officer called the superintendent registrar, appointed for every poor law union, parish, or place, under the 6 & 7 Wm. IV., c. 86, shall be the superintendent registrar of marriages therein, and established two new modes of proceeding to celebrate marriage, in addition to those sanctioned by the former Marriage Act, viz., a marriage by the superintendent registrar's certificate, without license, or by his certificate with license.

Neither of these acts extend to the marriages of the royal family, nor to any marriage taking place out of England.

MARRIAGE ARTICLES, an agreement in order to marriage; a stipulation between the parties, which is to be binding in case of marriage.

MARRIAGE CONSIDERATION, the highest consideration recognised by law. A marriage consideration, in a settlement made prior to marriage, or in pursuance of articles entered into before marriage, runs through the whole settlement, as far as it relates to the husband and wife and issue, and protects them.

MARRIAGE PORTION, the portion of one given in marriage.

MARRIAGE REGISTRY ACT, the 6 & 7 Wm. IV., c. 86, amended by 1 Vict., c. 22. See BIRTHS, DEATHS, AND MARRIAGES.

MARRIAGE SETTLEMENT, a conventional arrangement usually made before marriage, and in consideration of it (which is the highest consideration known to the law), whereby a jointure is secured to the wife, and portions to children, in the event of the husband's death. If it be made after marriage, it will, as a general rule, be fraudulent and void against all persons who are creditors of the husband at the time of the settlement, unless such settlement contain a provision for debts, or is made in pursuance of articles made before marriage, or unless it be against a single debt, or the debt be secured by mortgage, in which case it would not affect the settlement, for to do that, it seems the party must be insolvent at the time.

These settlements seem to have been in use among the ancient Germans, and their

kindred nation the Gauls. Of the former, Tacitus gives us this account:—" *Dotem non uxor marito, sed uxori maritus, affert: intersunt parentes et propinqui, et munera probant.*" *De Mor. Ger.*, c. 18. And Cæsar has given us the terms of a marriage settlement among the Gauls, as nicely calculated as any modern jointure:—" *Viri, quantus pecunias ab uxoribus dotis nomine acciperent, tantas ex suis bonis, æstimatione factâ, cum dotibus communicant. Hujus omnis pecunia conjunctim ratio habetur, fructusque servantur. Uter eorum vita superavit ad eam pars utriusque cum fructibus superiorum temporum pervenit.*" *De Bel. Gall.* l. vi., c. 18.

MARRIED WOMAN. See HUSBAND AND WIFE.

MARSHAL or **MARESCHAL**, primarily denotes an officer who has the care or command of horses. Nicod derives the word from *polemarchus*, master of the camp; Matthew Paris, from *martis senescallus*. In the old Gaulish language, *march* signified horse; whence *mareschal* might signify him who commanded the cavalry. Spelman, Skinner, and Menage derive it from the German *maer*, a horse, and *schalk*, servant, which makes some imagine the title was first given to farriers, or those who shod and bled horses; and that in time it passed to those who commanded them. There are several officers of this name, the chief of whom is the Earl Marshal of England: which see.

There are other inferior officers called marshals, who attend the Judges on the assizes, and receive records for trials, &c.

MARSHAL (LORD). See CHIVALRY, *Court of*

MARSHAL OF THE QUEEN'S BENCH, an officer who has the custody of the Queen's Bench Prison. The 5 & 6 Vict., c. 22, abolished this office, and substituted an officer, who is called Keeper of the Queen's Prison.

MARSHALLING, the act of arranging or of putting into proper order.

The technical phrase—"marshalling of assets,"—signifies, in the sense of courts of equity, such an arrangement of the different funds under administration as shall enable all the parties, having equities thereon, to receive their due proportions, notwithstanding any intervening interests, liens, or other claims of particular persons to prior satisfaction out of a portion of these funds. Thus, where there exist two or more funds, and there are several claimants against them, and at law one of the parties may resort to either fund for satisfaction, but the others can come upon one only; the courts of equity exercise the authority to marshal the funds, and by this means enable the parties, whose remedy at law is confined to one fund only, to receive due satisfaction. In fact, equity applies the maxims *Nemo ex alterius detrimento fieri debet locupletior*, and *Sic utere tuo ut alienum non lædas*.

This principle is by no means confined to the administration of assets, but it is applied to a vast variety of other cases, as, for instance, to cases of two mortgages, where one covers two estates and the other but one; to cases of extents by the Crown, to cases of double security generally, and in favour of creditors, legatees, widows, heirs at law, and devisees. It is never applied except where it can be done without injustice to the creditor or other party interested, having a title to the double fund, and also without injustice to the common debtor. Nor is it applied in favour of parties who are not common creditors of the same common debtor, except upon some special equity.

1 *Story's Eq. Jurisp.* 453.

MARSHALSEA, *court of the*, originally holden before the steward and marshal of the royal house, and instituted to administer justice between the sovereign's domestic servants, that they might not be drawn into other courts, and thereby their service become lost. It holds plea of all trespasses committed within the verge of the court (twelve miles round the sovereign's residence), where only one of the parties is in the royal service (in which case the inquest is taken by a jury of the country); and of all debts, contracts, and covenants, where both of the contracting parties belong to the royal household, and then the inquest is composed of men of the household only. But this court being ambulatory, Charles I. erected a new court of record, called the *curia palatii* or palace court, to be held before the steward of the household and knight marshal, and the steward of the court or his deputy, with jurisdiction to hold plea of all manner of personal actions whatsoever, which shall arise between any parties within twelve miles of the royal palace at Whitehall, not including the city of London.

The court is now held once a week for causes under 20*l.*, together with the ancient Court of Marshalsea in the borough of Southwark, and a writ of error lies thence to the Court of Queen's Bench.

MARSHALSEA PRISON. By 5 & 6 Vict., c. 22, this prison is consolidated with others, and denominated the Queen's Prison: which see.

MART [contracted from *market*], a place of public traffic.

MARTIAL, *courts*, military tribunals with jurisdiction over offences, committed by members of the army, according to the articles of war, and the provisions of the mutiny acts. But no officer or soldier is exempted from being proceeded against by the ordinary course of law; and where he is accused of any offence against a subject of the realm, punishable by the known law of the land, he shall be delivered over to the civil magistrate. No person shall by the articles of war be subjected to any punishment of transportation, or any punishment extending to life or limb for any crime which is not expressed to be so punishable by the

Mutiny Act itself, nor shall be punished in any manner or under any regulations which shall not accord with its provisions.

MARTIAL LAW, that rule of action which is imposed by the military power, and has no place in the institutions of this country, unless the articles of war established under the mutiny acts be considered as of that character. The prerogative of proclaiming martial law within this kingdom is destroyed, as it would appear by the Petition of Right.

MARTINMAS, the feast of St. Martin, on the 11th November; commonly corrupted to *martilmas* or *martlemas*.

MARTYRIA, a figure in rhetoric, in which the speaker brings his own experience in proof of what he advances.

MASAGIUM, a message.

MASTER [*meester*, Dut., *maistre*, Fr., *magister*, Lat.], a director; a governor; a teacher; one who has servants. It is a title given to several officers and persons of authority and command.

MASTER AND APPRENTICE, a business relationship which should be constituted by deed, containing all proper and explicit stipulations. If the apprentice be under age, an adult person should covenant for his good conduct, because a minor cannot be sued for misconduct.

At Common Law a master has such an interest in the apprentice, that he may defend him with force, or maintain an action for any injury to him, whereby a loss of service accrues; he may also support an action for his detention. The master is entitled to all the apprentice's earnings, however considerable, in case he should wrongfully absent himself.

An apprentice may compel maintenance and enforce proper instruction: and magistrates or a Court of Equity will, in some cases, enforce a return of the premium, or a just proportion of it. Consult *Chitty on Apprentices*.

MASTERS IN CHANCERY, officers of the High Court of Chancery. They are either ordinary or extraordinary.

1. *Ordinary*. They are appointed by letters patent from the Crown, by virtue of 3 & 4 Wm. IV., c. 94, § 16. They are twelve in number, of whom the Master of the Rolls is chief. They assist the Judges in equity, some of them sitting in court every day, according to rotation, and one at the Public Office, Southampton Buildings, Chancery Lane, who administers oaths, and makes dispatch of other business. They have referred to them interlocutory orders for taking accounts, ascertaining compensation, and the like. They report on exceptions to pleadings for insufficiency, scandal, and impertinence, settle conveyances, conduct sales, &c., they attend the House of Lords, and carry messages to the House of Commons, except such as relate to the royal family, which are usually carried by the Judges. There are attached to each master's office a chief clerk and a copying clerk.

2. *Extraordinary*. They are appointed to act in the country, beyond twenty miles distance from London, by taking affidavits, recognizances, acknowledgements of deeds, &c., for the accommodation of the suitors of the court.

MASTER AND CLERK, a clerk is a superior order of servant, and his duty is limited to the particular trade or employment for the service in which he is hired. If he be hired at specified yearly wages, he is to be considered as hired for an entire year, and the service cannot be put an end to before the end of an entire year, unless upon some adequate ground of mis-conduct by one of the parties towards the other. See *Huttman v. Bullnois*, 2 C. & P. 510; and *Archard v. Homer*, 3 C. & P. 349.

If a bond or covenant be taken from a surety for the faithful conduct of a clerk, it should be so framed as to continue to operate, notwithstanding any change in the firm or partners by death or other event, for otherwise it would cease to operate on the retiring or addition of a partner. And on behalf of a surety, it should be expressly provided that he shall be at liberty to withdraw his guarantee, upon giving a certain reasonable notice, for otherwise he might continue liable, notwithstanding notice of his desire to determine his liability, and notwithstanding a new security was taken and the original hiring was only as long as the employer and the clerk should think fit. It should also be stipulated that the obligee or master shall, at stated periods, ascertain and communicate to the surety the state of the clerk's accounts, for, otherwise, it frequently happens, that the master confiding in the surety, will let the clerk proceed in his irregularities to a ruinous extent, and then sue the surety for the whole defalcation; and, unless it be expressly so stipulated, delay in examining the clerk's accounts, or any conduct short of stipulated indulgence, will not release a surety from liability even in equity. 5 B. & Ald. 187.

MASTERS OF THE COMMON LAW COURTS. There are five masters on the plea side of each of the courts of Queen's Bench and Exchequer, and also in the Common Pleas. They are appointed by 7 Wm. IV. and 1 Vict., c. 30, and their duties are to tax costs, compute damages, attend the Judges in court, &c. R. H., 32 Geo. III.; 4 T. R. 580., Q. B.

MASTER OF THE CROWN OFFICE, the Queen's coroner and attorney in the criminal department of the Court of Queen's Bench, who prosecutes at the relation of some private person or common informer; the Crown being the nominal prosecutor. See **CROWN OFFICE**.

MASTER OF THE FACULTIES, an officer under the archbishop, who grants licences and dispensations, &c.

MASTER OF THE HORSE, the third great officer of the royal household, being next to the Lord Steward and Lord Chamberlain.

He has the privilege of making use of any horses, footmen, or pages belonging to the royal stables.

MASTER OF THE MINT, an officer who receives bullion from the goldsmiths, and pays them for it, and oversees every thing belonging to the mint. He is usually called the warden of the mint.

MASTER OF THE ORDNANCE, a great officer, to whose care all the royal ordnance and artillery is committed. 39 Eliz., c. 7.

MASTER OF THE ROLLS [*magister rotarum*]. The chief of a body of officers called the Masters in Chancery, of whom there are eleven others, including the Accountant-General. He is the Judge of the equity court, which ranks next to that of the Lord Chancellor, and has the keeping of the rolls and grants which pass the Great Seal, and the records of the Chancery. All orders and decrees by him made, except such as by the course of the court were appropriated to the Great Seal alone, shall be deemed to be valid, subject, nevertheless, to be discharged or altered by the Lord Chancellor, and so as they shall not be enrolled till the same are signed by the Lord Chancellor. 3 Geo. II., c. 30. But by 3 & 4 Wm. IV., c. 94, he is specially directed to hear motions, pleas, and demurrers, as well as causes generally.

MASTER AND SERVANT, a relation founded in convenience, whereby a person calls in the assistance of others, where his own skill and labour will not be sufficient to carry out his own business or purpose.

Servants are of several descriptions:—

1st. Servants in husbandry, termed labourers. These are placed, by virtue of several statutes, under the controul of magistrates, who have power to regulate their hours of work and amount of wages, and of compelling the payment thereof in money and not in goods, and prescribing punishment for misconduct. Servants in husbandry are very generally hired by the year, as from Michaelmas to Michaelmas, and this is an entire hiring for a year; and, unless otherwise stipulated, no wages are payable until the end of the year. The 3 & 4 Wm. IV., c. 103, regulates the labour of children and young persons in the mills and factories of the United Kingdom. A master cannot, by way of correction, even moderately beat his servant or labourer in husbandry, or otherwise, as he might his child or apprentice; and if he do, the servant may lawfully depart or obtain his discharge by application to a justice, and support an action for the battery. The exception is as to soldiers and sailors, which is allowed from the necessity of larger powers to preserve discipline and prevent mutiny. 5 & 6 Wm. IV., c. 19. Consult *Burn's Justice*, tit. "Servants."

2nd. Servants in particular trades. These are also subject to the controul of the magistrates, under several acts, some of them confined to particular trades, as the silk, cloth, woollen, linen, fustian, cotton, iron,

leather, hat, lace, clock, paper, tailor, shoemaker, and other trades; and disputes between master and servants in husbandry, artificers, calico printers, handicraftsmen, miners, colliers, keelmen, pitmen, glassblowers, and other labourers in general, are regulated by several more general acts. They will be found collected in *Burn's Justice*, tit. "*Servants*."

3. Menial or domestic servants. If no terms be stipulated, it is considered a hiring, with reference to the general understanding on the subject, that is, a continuing service, until the expiration of a month's warning given by either party. In the case of a domestic servant hired in the usual way, it appears to have been considered that he is entitled to his wages up to the time he actually serves, though he die or do not continue in the service the whole year, either for misconduct or otherwise, but not to any wages after the time of such discharge (6 *T. R.* 226). A master cannot, without express stipulation, deduct from the wages the value of articles broken or lost by a servant's want of care, however gross (4 *Camp.* 134). If a yearly servant be dismissed before the year expires, for misconduct which will justify his dismissal, the servant is not entitled to any wages even for any part of the time during which he served (6 *Car. & P.* 15).

It is not legally compulsory on a master or mistress to give a discharged servant any character; and no action is sustainable for the refusal; but if a character be given, it must accord with the truth; for if a false good character be given, and the servant afterwards rob his new master, the person who gave such false character is liable to an action, and to compensate for the entire loss; and he is liable to punishment in certain cases of false character, under 32 Geo. III., c. 56. And if a bad character be untruly and maliciously given, the party giving it will be liable to an action for defamation, though, until the untruth of the character given and express malice have been proved, the communication is presumed to have been privileged, and no action is sustainable (8 *B. & C.* 578).

A master is, in general, liable, civilly, and sometimes criminally, for torts committed by his servant in the course of or under colour of his employ, but he is not liable for the wilful misfeasance of his servant, who has wholly lost sight of his duty (1 *East*, 106).

MASTER OF A SHIP, the person intrusted with the care and navigation of a ship.

No one is qualified to be the master of a British ship, unless he be a natural born British subject, or naturalized by act of Parliament, or a denizen by letters of denization, or have become a subject of her Majesty by conquest, cession, &c., and have taken the oath of allegiance; or a foreign seaman who has served three years, in time of war, on board of her Majesty's ships.

The master of a ship is the confidential servant or agent of the owners; and in conformity to the rules and maxims of the law of England, the owners are bound to the performance of every lawful contract made by him relative to the usual employment of the ship.

From this rule of law it follows that the owners are bound to answer for a breach of contract, though committed by the master or mariners against their will, and without their fault. Nor can the expediency of this rule be doubted. The owners, by selecting a person as master, hold him forth to the public as worthy of trust and confidence. And in order that this selection may be made with due care, and that all opportunities of fraud and collusion may be obviated, it is indispensable that they should be made responsible for his acts.

The master has power to hypothecate or pledge both ship and cargo for necessary repairs executed in foreign ports during the course of the voyage; but neither the ship nor cargo can be hypothecated for repairs executed at home.

The master has no lien upon the ship for his wages, nor for money advanced by him for stores or repairs.

The master is bound to employ his whole time and attention in the service of his employers, and is not at liberty to enter into any engagement for his own benefit that may occupy any portion of his time in other concerns; and therefore, if he do so, and the price of such engagement happen to be paid into the hands of his owners, they may retain the money; and he cannot recover from them.

During war, a master should be particularly attentive to the regulations as to sailing under convoy; for, besides his responsibility to his owners or freighters, he may be prosecuted by the Court of Admiralty, and fined in any sum not exceeding 500*l.*, and imprisoned for any term not exceeding one year, if he wilfully disobey the signals, instructions, or lawful commands of the commander of the convoy, or desert it without leave. 43 Geo. III., c. 160.

A penalty of 25*l.* is imposed on every master of a vessel, who, having, on account of sickness, left any seafaring man at any foreign port or place, shall neglect or refuse to deliver an account of the wages due, and to pay the same. 5 & 6 *Wm. IV.*, c. 19.

The law makes no distinction between carriers by land and carriers by water. The master of a merchant ship is, in the eye of the law, a carrier, and is as such bound to take reasonable and proper care of the goods committed to his charge, and to convey them to the place of their destination, barring only the acts of God, and the Queen's enemies. Every act which may be provided against by ordinary care renders the master responsible. He would not, for example, be liable for damage done to goods on board, in consequence of a leak in the ship occasioned by

the violence of the tempest, or other accident, but if the leak were occasioned by rats he would be liable, for these might have been exterminated by ordinary care, as by putting cats on board, &c. On the same principle, if the master run the ship in fair weather against a rock, or shallow known to expert mariners, he is responsible. If any injury be done to the cargo by improper or careless stowage the master will be liable. *Abbott on Shipping*, pt. ii. c. 2; *McCulloch's Comm. Dict.*

MASTER OF THE TEMPLE, the chief ecclesiastical minister of the Temple Church, London.

MASURA, a decayed house; a wall; the ruins of a building; a certain quantity of lands, about four oxgangs. *Old Records*.

MATCH-MAKER, one who contrives marriages.

MATE, the deputy of the master in a merchant ship, taking, in his absence, the command. There are sometimes only one, and sometimes two, three, or four mates in a merchantman, according to her size, denominated first, second, third, &c., mates. The law, however, recognizes only two descriptions of persons in a merchantman—the master and mariners; the mates being included in the latter, and the captain being responsible for their proceedings.

In men-of-war the officers immediately subordinate to the captain are called lieutenants. But the master or officer whose peculiar duty it is to take charge of the navigation of the ship, has certain mates under him selected from the midshipmen. The boatswain, gunner, carpenter, &c., have each their mates or deputies taken from the crew. *McCulloch's Comm. Dict.*

MATELOTAGE, the hire of a ship or boat. *Cole*.

MATERIAL EVIDENCE, any testimony, which is necessary in support of, though it does not go to the entire, cause of action.

MATH, a mowing.

MATRICIDE, slaughter of a mother.

MATRICULA, a register of the admission of officers and persons entered into any body or society, whereof a list is made; hence those who are admitted into our universities are said to be matriculated. It is also a kind of alms-house.

MATRIMONIAL CAUSES, injuries respecting the rights of marriage. They are a branch of the ecclesiastical jurisdiction.

They are either:—

1. *Causæ jactitationis matrimonii*, as when one of the parties boasts or gives out that he or she is married to the other, whereby a common reputation of their marriage may ensue. The party injured may libel the other in the spiritual court, which will enjoin a perpetual silence on that head.

2. Restitution of conjugal rights. A suit for this is brought when a husband or wife is guilty of the injury of living apart from the other without any sufficient reason. The court will compel them to come together again.

3. Divorces, which are either *a mens et thoro*, or *a vinculo matrimonii*.

MATRIMONIAL CROWN, a grant by which the husband of the Scottish queen acquired the right to assume the title of king, to have his name stamped upon the coin, and to sign all public instruments together with the queen. In such cases the subjects took an oath of allegiance to him; his authority became, in some measure, co-ordinate with that of the queen, and without his signature no public deeds seem to have been considered as valid. *Encyc. Lond.*

Matrimonia debent esse libera.—(Marriages ought to be free).

MATRIMONIUM, the inheritance descending to a man *ex parte matris* (from his mother).

Matrimonium subsequens tollit peccatum præcedens. Jur. Civ.—(Subsequent marriage cures preceding criminality).

Matrimonium subsequens legitimos facit quoad sacerdotium, non quoad successionem, propter consuetudinem regni quæ se habet in contrarium. Co. Lit. 345.—(A subsequent marriage makes the children legitimate as far as relates to the priesthood, not as to the succession, on account of the custom of the kingdom, which is contrary thereto.)

MATRIMONY, marriage; the nuptial state; the contract of man and wife.

MATRIX ECCLESIA, the mother church.

MATRON, a married woman; a mother of a family.

MATRONS, jury of, a jury of twelve discreet women, directed by the Judges to enquire into the fact when a woman is capitally convicted, and pleads her pregnancy. This plea, though it cannot be made in stay of judgment, may be urged in respite of execution. If the jury find that she is with child, execution shall be stayed generally to the next session, and so from session to session till either the woman be delivered, or proves, by the course of nature, not to have been with child at all. But, if she once have the benefit of this reprieve, and been delivered, and afterwards become pregnant again, she shall not be entitled to the benefit of further respite for that cause; for she shall not, by her own incontinence, evade the sentence of justice.

Also, if a widow feign herself with child, in order to exclude the next heir, and a supposititious birth is suspected to be intended, then, upon the writ *de ventre inspiciendo*, a jury of women will be impanelled to try the question, whether with child or not. See **DE VENTRE INSPICIENDO**.

Matter in ley ne serra mise in bouche del jurors. Jenk. Cent. 180.—(Matter of law shall not be put into the mouth of the jurors.)

Maturiora sunt vota mulierum quam virorum. 6 Co. 71.—(The promises of women are prompter than those of men.)

MAUNDY THURSDAY [*dies mandati*, Lat., the day of the command], the day on which princes give alms.

MAXIM [*maximum*, Lat.], an axiom; a general principle; a leading truth.

Maxims of the law are holden for law; and all other cases that may be applied to them shall be taken for granted. 1 *Inst.* 11.

Maxime ita dicta quia maxima est ejus dignitas et certissima auctoritas, atque quod maxime omnibus probetur. Co. Lit. 11.—(A maxim is so called because its dignity is chiefest, and its authority the most certain, and because universally approved by all.)

Maxime paci sunt contraria, vis et injuria. Co. Lit. 161.—(Force and injury are chiefly contrary to peace.)

Maximus erroris populus magister. Bacon.—(The people is the greatest master of error.)

MAYHEM, the deprivation of a member proper for defence in fight, and which is not only an arm, leg, finger, eye, or a foretooth, but also some others; yet not, as it has been said, a jaw-tooth, or the ear, or a nose, because they have been supposed to be of no use in fighting. One remarkable circumstance peculiar to an action for mayhem is, that the court may, on view of the wound, afterwards increase the damages awarded by the jury. 3 *Salk.* 115; 7 *Wm. IV.* and 1 *Vict.*, c. 85, § 4.

MAYOR [according to some etymologists this word was anciently written *meyr*, comes from the British *miret*, to keep, or from the old English *maier*, power, and not from the Latin *major*]. The annual chief magistrate of a corporation, who, in London and York, is called Lord Mayor.

Mayors of corporations are justices of the peace *pro tempore*. Their powers and duties depend generally on the provisions of charters, corporate usages, or express enactments in acts of Parliament.

The 9 *Geo. IV.*, c. 17, substitutes a declaration in lieu of the sacramental test. See 3 & 4 *Wm. IV.*, c. 31, which prevents elections taking place on Sundays. As to elections under the Municipal Act, consult the act itself, 5 & 6 *Wm. IV.*, c. 76. A mayor is to hold office until its acceptance by his successor, 6 & 7 *Wm. IV.*, c. 105, § 4. As to the re-election of mayor, see 3 & 4 *Vict.*, c. 47; and 6 & 7 *Vict.*, c. 89.

MAYORALTY, the office of a mayor.

MAYORESS, the wife of a mayor.

MEAD or **MEADOW** [*mæde*, Sax.], ground somewhat watery, not ploughed, but covered with grass and flowers. *Encyc. Lond.*

MEAL-RENT, a rent formerly paid in meal. *Phillips*.

MEAN or **MESNE** [*medius*], a middle between two extremes, whether applied to persons, things, or time. See **MESNE**.

MEASE [*messuagium*], a messuage or dwelling-house; also, half of a thousand.

MEASON-DUE [*maison de Dieu*], a house of God; a monastery; religious house or hospital.

MEASURE [*mensura*, Lat.], that by which anything is measured; the rule by which anything is adjusted or proportioned.

The sovereign, as the arbiter of commerce, has the regulation of weights and measures. By 5 *Geo. IV.*, c. 74, 6 *Geo. IV.*,

c. 12, and 5 & 6 *Wm. IV.*, c. 63, repealing the former acts on the subject, standards are fixed for length, weight, and capacity; and it is provided that all contracts for sale, by weight or measure, where no special agreement is made to the contrary, shall be taken to refer to the standards so established. It is also enacted, that all articles sold by weight shall be sold by avoirdupois weight, except gold, silver, platina, diamonds, or other precious stones, which may be sold by troy weight; and drugs which, when sold by retail, may be sold by apothecaries' weight.

MEASURER or **METER**, an officer in the city of London, who measured woollen clothes, coals, &c. See **ALNAGER**.

MEASURING MONEY, a duty which some persons exacted, by letters patent, for every piece of cloth made, besides alnage. It is abolished.

MEDERIA, a house or place where metheglin or mead was made. *Old Records*.

MED-SCEAT, a bribe; hush money. *Anc. Inst. Eng.*

MEDFEE, a reward; a bribe; that which is given to boot. *Scott*.

MEDIÆ ET INFIMÆ MANUS HOMINES, men of a mean and base condition. *Blount*.

MEDIANUS HOMO, a man of middle fortune.

MEDIATE TESTIMONY, secondary evidence: which see.

MEDIATORS OF QUESTIONS, six persons authorised by statute, who, upon any question arising among merchants, relating to unmerchantable wool, or undue packing, &c., might, before the mayor and officers of the staple, upon their oath, certify and settle the same; to whose order and determination therein the parties concerned were to give entire credence, and to submit. 27 *Edw. III.*, st. 2, c. 24.

MEDICAL JURISPRUDENCE, forensic medicine: which see.

MEDICAL PRACTITIONER. By 6 & 7 *Wm. IV.*, c. 89, it is provided, that whenever it shall appear to a coroner that a deceased was attended at his death, or during his last illness, by any legally qualified medical practitioner, he may issue his order for the attendance of such practitioner as a witness at the inquest; and where the deceased was not so attended, an order for the attendance of any legally qualified medical practitioner, being at the time in actual practice, in or near the place where the death happened; and the coroner may also direct the performance, by the medical witness or witnesses, of a *post mortem* examination, with or without an analysis of the contents of the stomach or intestines, provided, however, that if any person shall state, on oath, before the coroner, his belief that the death was caused entirely or in part by the improper or negligent treatment of any person, such person shall not be allowed to perform or assist at the *post mortem* examination.

It is also enacted, that where it shall appear to the majority of the jury that the cause of death has not been satisfactorily explained by the witnesses in the first instance, they may name to the coroner, in writing, any other legally qualified practitioner or practitioners, and require their attendance as witnesses, or for the performance of a *post mortem* examination, whether one shall have been previously performed or not. And further, that all such medical witnesses shall be allowed remuneration for their attendance and trouble, and on the other hand shall forfeit 5*l.* for every neglect to obey an order for their attendance, with a proviso, however, that when the death took place in any public hospital or infirmary, or any county or lunatic asylum, no such remuneration shall be allowed to any person whose duty it was to attend the deceased as a medical officer of such institution.

For some valuable hints as to the conduct of medical witnesses, consult *Beck's Med. Jurisp.*, tit. "*Medical Evidence.*"

MEDIETAS LINGUÆ. See **DE MEDIETATE LINGUÆ.**

MEDIO ACQUIETANDO, a judicial writ to distrain a lord for the acquitting of a mesne lord from a rent, which he had acknowledged in court not to belong to him. *Reg. Jur.* 129.

MEDITATIO FUGÆ, an intention of flight. *Scotch Phrase.*

MEDLEFE, MEDLETA, MEDLETUM [*mesler*, Fr., to meddle], a sudden scolding at and beating one another. *Bract.* i. iii. c. 35.

MEDSYPP, a harvest supper or entertainment given to labourers at harvest home. *Cowell.*

MEETING-HOUSE ACT, the 7 & 8 Vict., c. 45.

MEGBOTE, a recompense for the murder of a relation. *Saxon Word.*

MEIGNE or **MAISNADER**, a family.

MEINY, MEINE, or MEINIE, the royal household; a retinue.

MELDFEOH, the recompense due and given to him who made discovery of any breach of penal laws committed by another person, called the promoter's (*i. e.*, informer's) fee. *Leg. Mæ.* c. 20.

Melior serra prize pour le roy. Jenk. Cent. 192.—(The best shall be taken for the king.)

MELIUS INQUIRENDUM, a writ that lay for a second enquiry, where partial dealing was suspected; and particularly of what lands or tenements a man died seized, on finding an office for the king. *F. N. B.* 255.

Melior dabit nomen rei. Bacon.—(The better gives a name to a thing.)

Melior est justitia verè præveniens, quam severè puniens. 3 Inst. Epil.—(Justice truly preventing is better than severely punishing.)

Melior est conditio possidentis et rei quam actoris. 4 Inst. 180.—(The condition of the possessor is the better; and that of the defendant than that of the plaintiff.)

Melior est conditio possidentis, ubi neuter jus habet. Jenk. Cent. 118.—(The condition

of the possessor is the better, where neither of the two have a right.)

Meliorem conditionem ecclesiæ suæ facere potest prælatus, deteriolem nequaquam. Co. Lit. 101.—(A bishop can make the condition of his own church better, but by no means worse.)

Meliorem conditionem suam facere potest minor, deteriolem nequaquam. Co. Lit. 337.—(A minor can make his own condition better, but by no means worse.)

Melius est omnia mala pati quam male consentire. 3 Inst. 23.—(It is better to suffer every ill than to consent to ill.)

Melius est recurrere quam malè currere. 4 Inst. 176.—(It is better to recede than to proceed badly.)

Melius est in tempore occurrere, quam post causam vulneratam remedium quærere. 2 Inst. 299.—(It is better to restrain in time than to seek a remedy after injury inflicted.)

MEMBERS OF PARLIAMENT. See **HOUSE OF LORDS** and **HOUSE OF COMMONS.**

MEMORIAL, that which contains the particulars of a deed, &c., and is the instrument registered, as in the case of an annuity, which must be registered. 3 *Sugd. V. & P.* 350; and see **JUDGMENT.**

MEMORY, time of. By Statute Westminster the First, 3 Edw. I., A.D. 1276, the time of memory was limited to the reign of Richard 1st, July 6th, 1189. But now see the Prescription Act, 2 & 3 Wm. IV., c. 71.

MENACE, a threat. 7 & 8 Geo. IV., c. 89, § 6.

MENAGIUM, a family.

MENDLEFE. See **MEDLEFE.**

MENIALS [*mænia*, Lat., walls], those servants who live within their master's walls. *Termes de Ley.*

MENSA, patrimony, or goods, and necessary for livelihood.

MENSA ET THORO, *divorce à.* See **MENSA ET THORO.**

MENSALIA, such parsonages or spiritual livings as were united to the tables of religious houses, and called *mensal benefices* among the canonists.

Mens testatoris in testamentis spectanda est. Jenk. Cent. 277.—(The testator's intention is to be regarded in wills.)

MENSURA DOMINI REGIS, or MENSURA REGALIS, the royal standard measure, according to which all measures were to be made, which was kept by the clerk of the House of Commons. But see **MEASURE.**

MENTAL ALIENATION, insanity.

It was remarked some years back by Esquirol, that insanity belongs almost exclusively to civilized nations. That it should do so is an inference which we might almost draw *à priori*. In a savage state the mind is uncultivated, its reasoning powers undeveloped, and consequently free from the various exciting causes which are perpetually operating on highly cultivated minds. In civilized life we may be said to beat out or expand our brains, and thus expose a more extended surface to the action of external

causes, than those who are actuated only by the ordinary excitements of the natural wants and appetencies. Dr. Prichard is disposed to think that congenital predisposition, so powerful a cause of insanity in civilized life, is wanting in the uncivilized state; and it is not going too far to suppose that as we see in refined states of society varieties of structure created, morbid varieties of organization may be increased or multiplied. There are many diseases, constitutional in civilized life, wholly unknown in the savage state.

"Some writers," says Foville, "have endeavoured to turn altogether from the investigation of the material organic cause of madness, resting on the belief that this is not a physical or material disease, but rather a disease of the soul.

"This extraordinary proposition is evidently an absurd profession of materialism: is it not in fact to deprive the soul of its most noble attributes, to degrade and debase it to the level of matter, to suppose it susceptible of alteration?

"The soul should be a stranger to our researches; but considering the brain as the material instrument of its manifestation, as the organ of intelligence, we seek in this organ the cause of the derangement which occurs in its functions."

Pinel placed the primary seat of insanity in the stomach and intestines, from which he supposed it radiated, and ultimately deranged the understanding; he afterwards, however, was inclined to give up all hope of ever being able to account for it by pathological appearances.

It is one of those metaphysical subtleties, so prevalent on the subject of insanity, that the acts of an insane mind are *involuntary*. It certainly can be of little practical consequence what epithet is applied to the acts of a mind admitted to be insane; though it seems to be an abuse of language to call any act involuntary which proceeds from a person's own free will. The exercise of the will may be greatly influenced by the condition of the mind, even to such an extent as to deprive a person of all criminal responsibility. But this does not necessarily prove insanity, unless, for instance, every man who commits a criminal act under the influence of strong passions, is considered as insane. The objection to this distinction is, that it is used as a test in the decision of doubtful cases, every one being left to decide as he pleases what acts are voluntary, and what involuntary.

A curious application of the distinction is made by Mr. Shelford in his work on lunatics (*Introd.* xlix.), when speaking of suicide—

"The art with which the means are often prepared, and the time occupied in planning them, seem to mark it [suicide] as an act of deliberate volition; but the acts of an insane mind are involuntary, and not voluntary; therefore, the question must always revert

to what was the real condition of the mind when suicide was committed."

If the preparation for the suicidal act be so indicative of that volition which is exercised by sound minds only, it is not very clear by what process of logic from these two propositions would be drawn the conclusion, that the "question must always revert to what was the real condition of the mind when suicide was committed."

This calls to mind a character commemorated in a work which appeared a few years since, called the "Clubs of London," who was remarkably addicted in his discourse to that species of reasoning, denominated by logicians the *non sequitur*, "the weather is uncommonly fine this morning," he would say, "therefore, I shall go home, and not stir out of my house the whole day." *Ray's Med. Jurisp. of Insanity*, 23.

Before an individual can be accounted sane on a particular subject, it must appear that he regards it correctly, in all its relations to right and wrong. The slightest acquaintance with the insane will convince any one of the truth of this position. In no school of logic, in no assembly of the just, can we listen to closer and shrewder argumentation, to warmer exhortations to duty, to more glowing descriptions of the beauty of virtue, or more indignant denunciations of evil doing than in the hospitals and asylums for the insane. And yet many of these very people may make no secret of entertaining notions utterly subversive of all moral propriety; and, perhaps, are only waiting a favourable opportunity to execute some project of wild and cruel violence. The purest minds cannot express greater horror and loathing of various crimes, than madmen often do, and from precisely the same causes. Their abstract conceptions of crime, not being perverted by the influence of disease, present its hideous outlines as strongly defined as they ever were in the healthiest condition; and the disapprobation they express at the sight arises from sincere and honest convictions. The *particular* criminal act, however, becomes divorced in their minds from its relations to crime in the *abstract*; and, being regarded only in connexion with some favourite object, which it may help to obtain, and which they see no reason to refrain from pursuing, is viewed, in fact, as of a highly laudable and meritorious nature. Herein, then, consists their insanity, not in preferring vice to virtue, in applauding crime and ridiculing justice, but in being unable to discern the essential identity of nature, between a particular crime and all other crimes, whereby they are led to approve what, in general terms, they have already condemned.

It is a fact not calculated to increase our faith in the march of intellect, that the very trait peculiarly characteristic of insanity has been seized upon as conclusive proof of sanity in doubtful cases; and, thus the infirmity that entitles one to protection is

tortured into a good and sufficient reason for completing his ruin. *Ray*.

The preposterous distinction between civil and criminal cases gives rise in practice to one of the most curious and startling inconsistencies that human legislation ever presented. While the mental impairment is yet slight, comparatively, and the patient is quiet and peaceable, the law considers him incapable of managing himself or his worldly affairs, and provides him with a guardian, and a place in the wards of an hospital; but, when the disorder has proceeded to such a height as to deprive the maniac of all moral restraint, and precipitate him on some deed of violence, he is to be considered as most capable of perceiving moral distinctions, and consequently most responsible for his actions.

Jurists, who have been so anxious to obtain some definition of insanity, which shall embrace every possible case, should understand, that such a wish is chimerical from the very nature of things. Insanity is a disease, and, as is the case with all other diseases, the fact of its existence is never established by a single diagnostic symptom, but by the whole body of symptoms, no particular one of which is present in every case. To distinguish the manifestations of health from those of disease requires the exercise of learning and judgment; and, if no one doubts this proposition, when stated in reference to the bowels, the lungs, the heart, the liver, the kidneys, &c., what sufficient or even plausible reason is there why it should be doubted when predicated of the brain?

The functions of those organs proceed with the regularity and sameness of clock-work, compared with the ever-varying and unequal phenomena of this, and yet there are persons, who assume a magisterial tone in writing or talking of the latter, who would defer to a tyro's judgment in whatever concerns the others. If, when anxious to know all we can, respecting a disease of the lungs or stomach, we repair to those who have a high and well-founded reputation in the pathology of those parts, why adopt the converse of this rule in regard to diseases of the brain? No reasonable person would desire to set up an insuperable barrier between the domain of professional knowledge and that of common sense and common information; but, it is not too much to insist, that facts, established by men of undoubted competence and good faith, should be rejected for better reasons than the charge of "groundless theory." *Ibid.* 46.

It is a curious fact, that many benevolent people in their desire to palliate the sins of criminals have inculcated the same principle which Lord Hale entertained, being that all crime is the offspring of partial insanity, for the purpose of drawing from it a very different inference. Hale's inference was that partial insanity furnishes no excuse for crime. The logic by which such opposite conclusions are arrived at, is certainly not unworthy the days of Dun Scotus or Thomas

Aquinas. Says the latter: crime must be punished; but all crime proceeds from madness, therefore, madness furnishes no exemption from punishment. Says the former: madmen are not responsible for their criminal acts; but madness is the source of all crime, therefore, madmen and criminals are equally irresponsible and exempt from punishment. Which of these two precious specimens of human subtlety, can claim the triumph of absurdity, it would not be easy to determine. *Ray on Insanity*, 47.

There is one operation of the common law, which is justly a cause of complaint, namely, that by which lunatics, even when under guardianship, are subject to be imprisoned like others, in default of satisfying a civil execution obtained against them; because whether such imprisonment be considered as a penal or a merely coercive measure, it is altogether inapplicable to the insane. It cannot coerce one who has no control over his own property, and whose mental condition is supposed to be such that he is unable to see any relation between the means and the end; and to punish a person for what he himself had no agency whatever in doing, is a violation of the first principles of justice. To incarcerate some madmen in a common gaol would, in all probability, aggravate their disorder, and if the confinement were protracted to the extent which the law would allow, render it utterly incurable.

All our knowledge of human nature, all our experience of the past, forces us to the conclusion that the presence of mental alienation should be admitted in him who commits a crime without positive interest, without criminal motives, and without a reasonable passion.

The subject was thus classified by Esquirol, at least, in its main features:—

1. *Mania*, an hallucination which extends to all kinds of objects, accompanied with excitement.

2. *Monomania*, confined to a single or a small number of objects.

3. *Dementia*, an incapacity of reasoning in consequence of functional disorder of the brain, not congenital.

Dementia appears under two different degrees of severity, which are designated as *acute* and *chronic*.

4. *Idiotism*, congenital, from original mal-conformation in the organ of thought. In some countries this melancholy disease is not uncommon, and it has been particularly remarked in the Valais in Switzerland and Carinthia. In the former country the subjects of it are styled Cretins.

The most striking physical trait of idiocy, and one seldom wanting, is the diminutive size of the head, particularly of the anterior-superior portions, indicating a deficiency of the anterior lobes of the brain. Its circumference, measured immediately over the orbital arch and the most prominent part of the occipital bone, is fixed by Gall, whose observations on this subject are entitled to great confidence, at between 11½ and 14½

inches (*Sur les Fonctions*, 329). The brain consequently equals that of a new-born infant; that is, about one-fourth, one-fifth, or one-sixth of the cerebral mass of an adult's in the full enjoyment of his faculties.

In imbecility the development of the moral and intellectual powers is arrested at an early period of existence. It differs from idiocy, in the circumstance that while in the latter there is an utter destitution of every thing like reason, the subjects of the former possess some intellectual capacity, though infinitely less than is possessed by the great mass of mankind.

Mental deficiency is manifested under two different forms, which Hoffbauer designates by the terms imbecility (*blödmus*) and stupidity (*dummheit*). The former consists in a defect of the *intensity*, the latter in a defect of the *extensity*, necessary to a sound and healthy mind. By intensity is meant the power of the mind to examine the data presented to it by the senses, and therefrom to deduce correct judgments; by its extensity, the mind perceives and embraces these data, and suffers none to escape—one, it may be added, is the *reflective*, the other the *perceptive* power.

Hoffbauer, while he acknowledges the various and almost imperceptible shades of difference between one case of imbecility and another, has reduced its numberless gradations to five degrees, and those of stupidity to three. To them, as described and explained by him, he looks for the means of a consistent and rational application of the legal principles that should regulate their civil and criminal relation. It hardly needs, however, the high authority of Esquirol to convince us, that these distinctions are drawn with a minuteness and show of accuracy, that savours more of the labours of the closet than of the rigid and faithful observation of nature.

5. *Moral Insanity*, i. e., a morbid perversion of the natural feelings, affections, inclinations, temper, habits, and moral dispositions, without any notable lesion of the intellect, or knowing and reasoning faculties, and particularly without any maniacal hallucination. Consult the interesting paper on insanity, by Dr. Prichard, in "*Cyc. of Prac. Med.*" The result of this species is various. In many it displays itself in an irresistible propensity to commit murder (homicidal monomania), in others to commit theft; while some are impelled to set fire to buildings, often of the most venerable description. Their whole moral character is changed: the pious become impious; the liberal, penurious; the drunken, sober.

On the subject of homicidal monomania, M. Esquirol has made some excellent and practical remarks. He divides the subjects of this form of insanity into three classes:—

In the first group, the individuals who have the desire to kill, are incited by motives more or less chimerical; more or less contrary to reason: their insanity is obvious to every one.

In the second group, the homicidal monomaniacs have no known motives, either imaginary or real; the unfortunate individuals who enter into this group, being hurried on by a blind impulse, which they strive to resist, and so escape their destructive propensities.

In the third group, the impulse is sudden, instantaneous, devoid of anything like reflection, and stronger than the will; the act is committed without any motive whatever, and on some beloved objects.

These individuals now under consideration, essentially differ from criminals, with whom they have been confounded, and whose punishment they have been made to suffer.

Monomaniacal homicides are isolated without accomplices to excite them by advice or example. Criminals, on the contrary, generally have immoral comrades, and accomplices aiding and assisting them.

The doctrine of moral insanity has been as yet unfavourably received by judicial authorities, not certainly for want of sufficient facts to support it, but probably from that common tendency of the mind to resist innovations upon old and generally received views.

"If," observes Dr. Ray, "a quarter of a century ago, one of the highest law officers of Great Britain pronounced the manifestation of 'systematic correctness' of an action, a proof of sanity sufficient to render all others unnecessary, it is not surprising that the idea of moral insanity has been considered by the legal profession as having sprang from the teeming brains of medical theorists. In the fulness of this spirit, Mr. Chitty (*Med. Jurisp.* 352), declares, that 'unless a jury should be satisfied that the *mental faculties* have been *perverted*, or, at least, the faculties of reason and judgment, it is believed that the party subject to such a *moral insanity*, as it is termed, would not be protected from criminal punishment;' and in the trial of Howison, for the murder of the widow Geddes, at King's Cramond, Scotland, two or three years since, moral insanity, which was pleaded in his defence, was declared by the court to be a 'groundless theory.' Such opinions, from quarters where a modest teachableness would have been more becoming than an arrogant contempt for the results of other men's inquiries, involuntary suggest to the mind a comparison of their authors with the saintly persecutors of Galileo, who resolved by solemn statutes that nature always had operated, and always should operate in accordance with their views of propriety and truth." *Med. Jurisp. of Insanity*, 45.

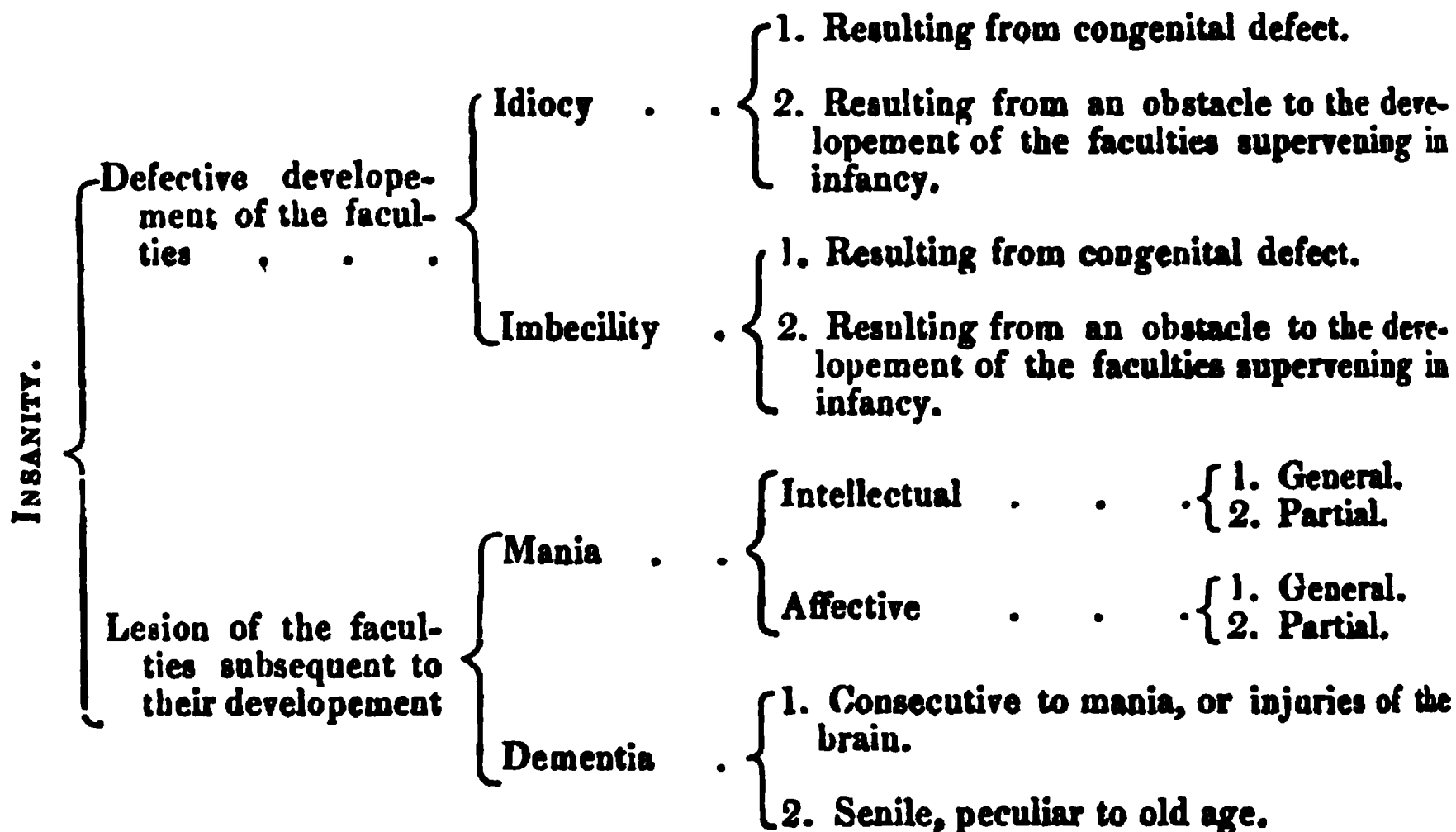
5. *Demonomania*, a variety of melancholy arising from mistaken ideas on religious subjects.

6. *Nymphomania*, or *furor uterinus*, a raving mania of females, connected with a disorder of the generative organs.

As to feigned and concealed insanity, see **SIMULATED INSANITY.**

The various diseases included in the general term insanity or mental derangement, has been thus arranged by Dr. Ray (*Med.*

Jurisp. of Insanity), under two divisions founded on two very different conditions of the brain :—



Medical jurists treat of inferior degrees of diseased minds; as the *delirium* of fever resembling mania; *hypochondriasis*, like to melancholy; *hallucination*, i. e., an idea reproduced by the memory, associated and embodied by the imagination; *epilepsy*, tending to *dementia*; *nostalgia*, a form of melancholy originating in despair, from being separated from one's native country; *intoxication*, producing *delirium tremens*, and the *dementia* of old age.

In cases where the validity of testamentary dispositions is impugned on the ground of mental incapacity produced by delirium, or, indeed, by any other disorder, it is the practice of the ecclesiastical courts not to confine their attention exclusively to the evidence directly relating to the mental condition of the testator, but to consider all the circumstances connected with the testamentary act; for the object is not so much to settle the question of soundness or unsoundness in general, as it is in reference to that particular act. The principle is—and it is one that is well-grounded in the common experience of men—that a person may be capable of testamentary acts, while technically and really unsound and incapable of doing other acts requiring much reflection and deliberation. Accordingly, his testamentary capacity is to be determined in a great measure by the nature of the act itself. If it be agreeable to instructions or declarations previously expressed, when unquestionably sound in mind; if it be consonant to the general tenour of his affections; if it be consistent and coherent, one part with another, and if it have been obtained by the exercise of no improper influence; it will be established, even though the medical evidence may throw strong doubts on the capacity of the testator. On the contrary, where these conditions are absent, or are

replaced by others of an opposite description, it will as generally be annulled, however plain and positive may be the evidence in favour of the testator's capacity. 1 *Hagg. Ecc. R.* 256, 577.

The insane are disqualified from appearing as witnesses in courts of justice, their incompetence being inferred from their mental unsoundness. The fact of incompetence to testify, however, is not necessarily connected with that of insanity, and it would be far more correct to consider the former an independent fact to be established by a distinct order of proofs. The practice of including an act of testifying with that of performing business-contracts, or other civil acts, is certainly not favoured by the present state of our knowledge of insanity, nor does it approve itself to the common sense of mankind.

The higher degrees of imbecility must of course disqualify a witness, but its less aggravated forms may not, under all circumstances, have this effect.

"Of an insane person," says Evans (2 *Pothier on Obligations*, app. 259), "it might, for defect of other evidence, merit to be considered whether, in civil cases at least, the testimony of such might not be admissible, upon points where his understanding did not appear to be subject to disturbance; it being well known that in many of these melancholy instances, especially when the result of some violent passion, the party affected is entirely cool, clear, and collected in his ideas, and as free as other persons, from the delusions of a perverted imagination, in everything not connected with the cause of his insanity; with regard to persons who have only temporary fits of madness (those usually termed lunacy), and at other times are in all respects sound of reason, these are then considered as

capable of testimony as of any other legal act."

On the whole, we may conclude, with Georget, "that it is necessary to know the patient, the character of his madness, his customary relations to surrounding objects, before we can know what degree of confidence to place in his assertions."

The competence of old men, in the early stages of *dementia*, to testify, is a point frequently discussed in courts of justice, and the want is severely felt of some fixed principles that shall serve as a guide to correct decisions. In every stage of this affection, the impairment of the memory is more perceptible in regard to recent than remote impressions; and it often happens that a person may have a distinct recollection of things that occurred in his youth, while those of a month's or a year's date are but imperfectly remembered, if at all. To test the strength of his memory respecting certain things, it is only necessary to ascertain if he remember various other transactions of about the same date in which he was known to have been engaged. If he can do this, it is a strong presumption in favour of his competency, if not, it is incumbent on the party offering his testimony to show why his memory should have been more faithful in the one case than the other. This is rendered still more necessary by the fact, that the weakness of mind incident to this condition makes its subjects more easily swayed by the suggestions of others, and leads them to believe that they remember what they are told they ought to remember, or what they are assured they actually did remember till within a recent period. The slightest examination will show how much dependence can be placed on their recollections of recent events. Consult *Ray's Med. Jurisp. of Insanity*; *Beck's Med. Jurisp.*, tit. "*Mental Alienation*;" and *Uwins on Mental Disorders*.

MENTITION, the act of lying; a falsehood. *Mentiri est contra mentem ire.* 3 Buls. 260. —(To lie, is to go against the mind).

MEPRIS, neglect; contempt.

MER or **MERE**, a fenny place.

MERA NOCTIS, midnight. *Cowell.*

MERANNUM, timbers; wood for building. *Old Records.*

MERCABLE [*mercor*, Lat.], to be sold or bought.

MERCANTANT, a foreign trader.

MERCANTILE, trading; commercial; relating to traders.

MERCAT [*mercatus*, Lat.], market; trade.

MERCATIVE, belonging to trade.

MERCATURE, the practice of buying and selling.

MERCEDARY [*mercedula*, Lat., a small fee], one that hires.

MERCEN-LAGE, the Mercian laws, which were observed in many of the midland counties, and those bordering on the principality of Wales, the retreat of the ancient Britons.

MERCENARIUS, a hireling or servant.

MERCHANT [*merchand*, Fr.], one who traffics to remote countries. See **COMMERCIAL LAW**.

MERCHETA, the right of concubinage which certain lords had with their tenants' wives on their wedding night. See **BOROUGH ENGLISH**.

MERCIAMENT, an amerciament, penalty, or fine.

MERCIMONIATUS ANGLIÆ, the impost of England upon merchandize.

MERE RIGHT, the right of property.

MERGER [*mergo*, Lat., to drown], the doctrine of merger is simply this: that if two estates in realty vest in the same person in the same right, and without any other estate intermediate between them, the lesser is sunk or destroyed in the greater. Thus, if an estate for life, and a greater estate immediately expectant upon it, meet in the same person, the first estate is merged. If, however, one of the estates be vested in him as joint-tenant only, with others, as if he be joint-tenant of the first estate and sole tenant of the second, his share only will be merged, provided the two estates be vested in him by several conveyances (*Co. Litt.* 182, b). And if he be sole owner of the first estate, and joint-tenant of the second, his estates will be merged either for a whole or a part only of the tenement, according to the apparent intention with which the two estates were brought together. Thus, if A. and B., joint-tenants in fee, make a lease for life to C., and C. afterwards surrender his lease to A., C.'s estate for life will entirely merge. And this takes place because a surrender is a peculiar kind of conveyance, and is only resorted to when it is intended that the estate of the surrenderor should merge in the estate of the surrenderee. But if C. convey his estate to A. by such an assurance, as he would have used, had he been to convey to a stranger, then the intention being apparently not to destroy the estate, one moiety only would merge. Consequently A. would be seised in fee of that moiety of the tenement, and of the other moiety, for the life of C., with reversion in fee to B.

A man may also have one of the estates in his wife's right. Thus, if a woman be tenant for life, with remainder to a man in tail, and they intermarry, no merger will take place, for the husband has the life estate in his wife's right, and the remainder in tail, in his own right. And so *vice versa*. If, indeed, the wife be tenant for life, and the reversion in fee be conveyed to the husband and wife, the estate for life is merged; yet the wife, surviving, may revive it by expressing her dissent to the conveyance.

Where a person, having any estate capable of merger, takes a conveyance of the remainder or reversion merely as an instrument of transfer to others, under the Statute of Uses, as if A. being tenant for life, the reversion in fee is conveyed to him to the

use of B., his prior estate is preserved by the third section of that statute. 3 *Prest Con.* 305, 308.

It is to be particularly remarked, that where a tenant in tail, whether in possession or not, with remainder or reversion to B. in fee, there being a protector of the settlement, makes an assurance by virtue of the 3 & 4 Wm. IV., c. 74, which, by reason of the non-consent of the protector, is insufficient to bar the remainder or reversion, such assurance bars the issue in tail, and acquires a fee determinable on failure of such issue, but does not divest or displace the remainder or reversion, which, therefore, continues to subsist as an estate, expectant on the determinable fee. If, by any means, the remainder or reversion of B. become afterwards vested in A., the determinable fee does not merge in the remainder or reversion, as upon ordinary principles it would have done, but, by the express provisions of the act, is *enlarged*, and A. has thenceforth a clear fee simple, founded, in point of title, upon the estate tail. 3 & 4 Wm. IV., c. 74, § 39.

Owners of both lands and tithes, even tenants for life, are empowered to merge tithes in the lands. 6 & 7 Wm. IV., c. 71, §§ 71, 81, &c.

If a term of years, and the inheritance meet in one person in the same right, the term is extinct, but the interposition of an estate, either for life, in tail, or for years, will, during its continuance, prevent the merger of the term, but not an *interesse termini*, for it gives no actual vested estate, as it is not a term, but merely a contract for a term. A term vested in a person as executor, may belong to him beneficially; and it therefore seems, that if he purchase the reversion, the term will be extinct, except as to creditors. If a man possessed of a term in right of his wife, purchase the freehold, there seems to be reason to contend, that the term will merge, inasmuch as the estates coalesce by his own act, and not, as in the case of marriage, by the act of law. 3 *Sugd. V. & P.* 22. But if a lessee make the freeholder his executor, the term will not merge.

In order to merge the term, it should be surrendered to the immediate remainderman or reversioner, whether freeholder or termor, and whether, if termor, his term be of longer or shorter duration than the term to be merged. Suppose the land were limited, first, to A. for 1000 years; secondly, to B. for 500 years; thirdly, to C. for 600 years, and subject to these terms to E. in fee, and it were wished to keep on foot the 500 years' term and merge the rest, A. should surrender to B., and C. to E. It was formerly holden that a term for years would not merge in a term for years, but the case of *Hughes v. Robotham*, Cro. Eliz. 302, determined that if there be two termors, he who has the less estate may surrender to the other and the term will merge in the greater,

and that although the reversion be for a less number of years than the term in possession, yet the term in possession shall merge in that in reversion, all terms being considered equal in law, but both the terms must be granted by the same person; for if a termor for years grants another term (as a mortgage by demise for instance), then when the sub-term comes into the possession of the termor or his assignee, it merges, and the reversion of the first term comes into play for all the remaining portion of its duration.

It is doubtful when the second term is in remainder, whether a merger will take place. 4 *Bac. Ab.* 211.

If a trust and legal estate unite in the same person, the former, generally speaking, becomes merged or extinguished. Equity will, in certain cases, relieve against the effects of a legal merger.

Where a person who has the absolute interest in an equitable charge upon land becomes also entitled to the land itself in fee simple, the charge becomes extinguished, unless the party either take some measures for its continuance, or die under circumstances which require it to be kept up, which will be the case if his assets are otherwise deficient for the satisfaction of creditors. 1 *Sand. Uses and Trusts*, 330; 8 & 9 Vict., c. 106, § 9.

The rule of extinguishment differs from that of merger, in being applicable to a charge or right instead of a preceding estate. *Merito beneficium legis amittit, qui legem ipsam subvertere intendit.* 2 Inst. 53.—(He justly loses the benefit of law who purposes to overturn the law itself).

MERITS, affidavit of. This instrument is necessary, when a defendant seeks to set aside proceedings for irregularity, especially if the irregularity be doubtful. In all cases, when the facts will warrant, it is advisable that the affidavit should thus run:—"And this deponent further saith, that he is advised, and verily believes, that he has a good and sufficient defence to this action on the merits;" not merely that he has merits, or that he has a good defence. It must be made either by the defendant himself, or his attorney, or agent, or the clerk of the attorney, who has the sole management of the cause, or some person who has had such a connection with the cause as acquaints him with its merits, and this must appear on the face of the affidavit.

The term "merits," in an affidavit of this nature, is to be read in a technical sense, and is not to be understood to be confined to a strictly moral and conscientious defence, and therefore a sufficient defence on the merits might be safely sworn to when the defence rests alone on a legal or technical objection, as the statute against frauds or usury, or a statute of limitations. *Chit. Arch. Prac.* 705.

MERO MOTU. See *EX MERO MOTU*.
MERSCUM, a lake.

MERSE-WARE, the ancient name for the inhabitants of Romney Marsh, Kent.

MERTLAGE, a church calendar or rubric. *Cowell.*

MERTON, *Statute of*, 20 Hen. III., c. 4.

MESNALITY, a manor held under a superior lord.

MESNALTY, the right of the mesne.

MESNE [*medius*, Lat.], middle, intermediate.

MESNE LORD, a lord who holds of a superior lord.

MESNE PROCESS, all those writs which intervene in the progress of a suit or action, between its beginning and end, as contradistinguished from primary and final process. Thus, the *capias* on mesne process, is issued after a writ of summons, which is the primary process, and before a *capias ad satisfaciendum*, which is the final process, or process of execution. See **CAPIAS**.

MESNE PROFITS, *action of*, an action of trespass which is brought to recover profits derived from land, whilst the possession of it has been improperly withheld; that is, the yearly value of the premises. It is brought after a judgment for the plaintiff in an action of ejectment which recovered possession of the land, the damages being nominal in all cases of ejectment, except that between landlord and tenant, by 1 Geo. IV., c. 87, § 2.

The action may be brought in the name either of the nominal plaintiff or his lessor, the real plaintiff; if brought in the name of the nominal plaintiff, the defendant can obtain security for costs. Any person found in possession of the premises after a recovery in ejectment, is liable to this action. But the action cannot be maintained against executors or administrators for the profits during the lifetime of the testator or intestate, and received by him, except, indeed, for the profits received within six calendar months before the death of the testator or intestate, and then only provided the action be brought against the executor or administrator within six months after entering upon the administration of the estate. 3 & 4 Wm. IV., c. 42, § 2. The action may be brought, pending a writ of error in ejectment, and the plaintiff may proceed to ascertain his damages and sign judgment, but the court will stay execution till the writ of error be determined. The defendant may pay money into court, as in other actions.

If a plaintiff seek to recover damages for any time prior to the day of the demise in the declaration of ejectment, he must give actual evidence of his title; but if he only seek to recover damages from that day, it is sufficient to produce the judgment in ejectment, and the writ of possession executed, and to prove the value of the profits. The jury is not bound by the amount of the rent, but may give extra damages. But ground rent paid by the defendant should be deducted from the damages. If a plaintiff have had judgment against the casual ejector, he may recover in this action such costs against

the tenant or person last in possession, and also the costs incurred by him in a court of error. If a plaintiff recover less than 40*s.* damages, he shall have no more costs than damages, unless the Judge certify. *Chit. Arch. Prac.* 785; *Woodf. Land. and Ten.* 693; and *Adam's Eject.*

This action precisely answers to the *ἐνοικίου δίκην* of the Greeks. *Meier. Att. Proc.* 749.

MESSARIUS [*messis*, Lat.], a chief servant in husbandry; a bailiff.

MESSENGER, one who carries an errand; a forerunner.

Messengers are certain officers employed under the direction of the Secretaries of State, and always ready to be sent with all manner of dispatches, foreign and domestic. They are employed with the Secretaries' warrants to arrest persons for high treason, or other offences against the state, which do not so properly fall under the cognizance of the common law; and, perhaps, are not properly to be divulged in the ordinary course of justice. 2 *Hawk. P. C.*, c. 16, § 9.

There are other officers distinguished by this appellation, as the messenger of the Lord Chancellor, Privy Council, or Exchequer, &c. Also, of the commissioners in bankruptcy, who seize a bankrupt's property, &c. See 6 *Geo. IV.*, c. 16, §§ 31, 32, 44, 90.

MESSE THANE, one who said mass; a priest. *Cowell.*

MESSINA, harvest.

Messis sementem sequitur.—(Harvest follows seed-time.)

MESSUAGE [*messuagium*, law Lat., formed perhaps from *mesnage*, by mistake of the *n*, in court hand for *u*, they being written alike; or from *maison*, Fr.], a dwelling-house with some adjacent land assigned to the use thereof. As to the legal import of the word, see 2 *Bing. N. C.* 617; *Monks v. Dykes*, 4 *M. & W.* 567.

In Scotland, the manor-house, or the principal dwelling-house within a barony.

METACHRONISM [*μετά*, Gr., against, and *χρόνος*, time], an error in computation of time.

METECORN, a measure or portion of corn, given by a lord to customary tenants as a reward and encouragement for their duties of labour.

METEGAVEL [meat-tax, Sax.], a tribute or rent paid in victuals.

METER [*mete*], a measurer, as a coal-meter, a land-meter.

METEWAND or **METEYARD**, a staff of a certain length wherewith measures are taken.

METHEL [*mallum*], speech, discourse; *mathēlian*, to speak, to harangue. *Anc. Inst. Eng.*

METROPOLITAN COMMISSIONERS OF LUNACY, officers appointed by 2 & 3 Wm. IV., c. 107, to license lunatic asylums.

METROPOLITAN POLICE ACTS, 10 Geo. IV., c. 44; 3 & 4 Wm. IV., c. 89; 2 & 3 Vict., c. 47; 2 & 3 Vict., c. 71; 2 & 3 Vict.,

c. 94 (city of London); and 3 & 4 Vict., c. 84.

METROPOLITAN STAGE CARRIAGE ACT, 6 & 7 Vict., c. 86.

METTESHEP, or **METTENSCHep**, an acknowledgment paid in a certain measure of corn; or a fine or penalty imposed on tenants for default in not doing their customary service in cutting the lord's corn. *Old Records*.

Meum est promittere non dimittere. 2 Rol. Rep. 39.—(It is mine to promise, not to discharge.)

MEYA, a mow or heap of corn.

MICHEL-GEMOTE, the great meeting or ancient Parliament of the kingdom.

MICHEL-SYNOTH, the great council of the Saxons.

MICHAELMAS, the feast of the archangel Michael, celebrated on the 29th of September.

MICHAELMAS HEAD COURT, a meeting of the heritors of Scotland, when the roll of freeholders is revised. 20 Geo. II., c. 50.

MICHERY, theft; cheating.

MIDDLESEX, bill of, a writ anciently resorted to by the Court of Queen's Bench, in order to enlarge its jurisdiction in civil causes.

The jurisdiction of this court in civil actions, was formerly confined to actions of trespass, or other injury alleged to be committed *vi et armis*. But this court might always have held plea of any civil action other than actions real, provided the defendant was an officer of the court, or in the custody of the marshal, that is, the prison keeper of the court. On this latter privilege was built the fiction of surmising that the defendant had committed a breach of the peace in the county in which the court sits, and in which it was held to possess an extraordinary criminal jurisdiction, and then issuing a bill of Middlesex against him as for this trespass, and supposing him to be afterwards committed by virtue of that writ and as for that trespass, to the custody of the marshal, so as to bring him within the proper jurisdiction of the court. In proceedings against prisoners or officers of the court, the actions were said to be commenced by bill, in all other cases by original. Both are now abolished by 2 Wm. IV., c. 39.

MIDDLESEX QUARTER SESSIONS. By 7 & 8 Vict., c. 71, it is enacted, that there shall be holden for the county of Middlesex two sessions, or adjourned sessions of the peace, in every calendar month, and that the first session in January, April, July, and October, respectively, shall be the general quarter sessions of the county; and the second sessions in January, April, July, and October, shall be adjournments of the general quarter sessions.

MIDSUMMER-DAY, the summer solstice, which is on the 24th day of June; and the feast of St. John the Baptist, a festival first mentioned by Maximus Tauricensis, A. D.

400. It is generally a quarter day for the payment of rents, &c.

MILE, a measure of length or distance containing eight furlongs, or 1760 yards, or 5280 feet.

MILES, generally a soldier, particularly a knight.

MILITARE, to be knighted.

MILITARY CAUSES, all matters concerning the discipline of the army, and contracts, &c., relating to deeds of arms and war.

MILITARY COURTS, the court of chivalry (which see), and courts martial, which are temporary and annually established by act of Parliament.

MILITARY FEUDS, the genuine or original feuds which were in the hands of military men, who performed military duty for their tenures. See **TENURE**.

MILITARY FORCES, the militia or volunteers, and the regular standing army, which, however, is continued from year to year, by act of Parliament.

MILITARY LAW. See **MARTIAL LAW**.

MILITARY OFFENCES, those matters which are cognizable by the courts military, as insubordination, sleeping on guard, desertion, &c.

MILITARY SAVINGS BANKS. By 5 & 6 Vict., c. 71, the Queen may establish military or regimental savings banks, for the purpose of receiving sums of money from such of the non-commissioned officers and soldiers employed in her service, either in the United Kingdom or on foreign stations (the East Indies excepted), as shall be desirous of depositing the same, and the regulation for the management of such institutions is intrusted to the Secretary at War for the time being, in concurrence with the commander-in-chief, and the lords of the treasury.

MILITARY STATE, the soldiery of the kingdom.

MILITARY TENURE, tenure in chivalry or knight-service.

MILITARY TESTAMENT, a nuncupative will, that is, one made by word of mouth, by which a soldier may dispose of his goods, wages, and other personal chattels, without the forms and solemnities which the law requires in other cases. 1 Vict., c. 26, § 11.

MILITIA, the national soldiery, opposed to the regular stated forces or standing army, being the inhabitants, or, as they have been sometimes called, the *trained-bands* of a town or county, who are armed, on a short notice, for their own defence.

The militia is formed of a number of persons in each county, who are drawn by lot for five years (liable to be prolonged by the circumstance of the militia being actually embodied for service), and officered by the lords lieutenants and other gentlemen, under a commission from the Crown. They are not compellable to leave their county, unless in case of invasion or actual rebellion within the realm, nor in any case to march out of the kingdom.

The persons exempted from serving in the militia or providing substitutes, are peers of the realm; commissioned officers in her Majesty's other forces, or in any of the royal castles and forts; non-commissioned and private men serving in any of her Majesty's other forces; commissioned officers serving or who have served four years in the militia; members of either of the universities; clergymen; licensed teachers of any separate congregations; constable; or other such peace-officers; articulated clerks; apprentices; seamen or sea-faring men; persons mustering and doing duty in any of her Majesty's dock-yards; persons free of the company of watermen of the river Thames; persons employed and mustered at the Tower of London, Woolwich Warren, the several gunwharfs at Portsmouth, Chatham, Sheerness, and Plymouth; or at the powder mills, magazines, or the houses under the direction of the board of ordnance; and poor men who have more than one child born in wedlock.

By 42 George II., cap. 90, the chief of the former acts relative to the militia, are, from June 26, 1802, repealed; excepting such as relate to the city of London, Tower Hamlets, the Stannaries, and the Cinque Ports. See the Local Militia Acts, 48 Geo. III., c. 111 (England); and 48 Geo. III., c. 150 (Scotland). The Irish Militia Act is 54 Geo. III., c. 179.

MILBANK PRISON, formerly called the Penitentiary at Milbank. A prison in the neighbourhood of Westminster, for the reception of convicts under sentence or order of transportation, to be there confined until the sentence or order shall be executed, or until the convict shall be entitled to freedom, or be removed to some other place of confinement. The justices of the peace have no authority over this prison, but it is placed under such of the inspectors of prisons as shall be appointed for that purpose, by one of the principal Secretaries of State, and who are to be a body corporate, by the name of "The Inspectors of the Milbank Prison." These inspectors are to make regulations for government thereof, subject to the approbation of a principal Secretary of State, and to make yearly reports to such secretary, as to all matters relating to the prison or the convicts, which reports are to be afterwards laid before both houses of Parliament. A principal Secretary of State is also to appoint for the prison a governor, chaplain, medical officer, matron, and such other officers as may be deemed requisite. 5 & 6 Vict., c. 98; and 6 & 7 Vict., c. 26.

MILEAGE, travelling expenses, which are allowed to witnesses, sheriffs, and bailiffs, according to certain scales of fees, settled by the masters of the several courts of law and equity.

MILL-HOLMS, low meadows and other fields in the vicinity of mills, or watery places about mill dams. *Encyc. Lond.*

MILLEATE or **MILL-LEAT**, a trench to

convey water to or from a mill. 7 Jac. I., c. 19.

MINAGE, a toll or duty paid for selling corn by the mina. *Cowell.*

MINARE, to dig mines.

MINATOR, a miner. *Old Records.*

MINATOR CARUCÆ, a ploughman. *Cowell.*

Minatur innocentibus, qui parcit nocentibus. 4 Co. 45.—(He threatens the innocent who spares the guilty).

MINE [*miwyn* or *miwy*, Wel., from *maen*, a stone], a place or cavern in the earth, which contains and yields metals or minerals. Where stones only are produced, the appellation of quarries is universally bestowed upon the places from which they are dug out.

As to royal mines, see **LAND**.

A man may dig mines in his own lands, but he cannot go under the land of his neighbour, for that would be trespass. 6 Ves. 147. The lord of a manor, as such, has no right, without a custom, to enter upon copyhold lands in his manor, under which there are mines or veins of coal, to bore for or work the same, for the copyholder may maintain trespass for so doing, and also obtain an injunction against the lord to restrain him. 17 Ves. 281. But a copyholder of inheritance may dig mines in his own land.

A tenant for life may work open mines and sink new shafts or pits to pursue the old veins. And he may also work any mines lawfully opened by a preceding tenant in tail, although subsequent to the settlement under which he claims; but if he open a new mine it is waste. 3 P. Wms. 288.

MINERATOR, a miner. *Old Records.*

Minima pœna corporalis est major qualibet pecuniaria. 2 Inst. 220.—(The smallest bodily punishment is greater than any pecuniary one).

Minimè mutanda sunt quæ certam habent interpretationem. Co. Lit. 365.—(Things which have a certain interpretation are to be altered as little as possible).

MINIMENT or **MUNIMENT**, the evidences or writings, whereby a man is enabled to defend the title of his estate. It includes all manner of evidences. *Cowell.*

Minimum est nihilo proximum.—(The smallest is next to nothing).

MINING COMPANIES. By this designation was formerly meant the associations formed in London in 1825, for working mines in Mexico and South America; but at present it comprises all mining projects carried on by joint-stock associations. *Mc Culloch's Comm. Dict.*

MINISTER, an agent; one who acts not by any inherent authority, but under another.

In politics, one to whom a sovereign entrusts the administration of government. In Great Britain, the word *ministry* is used as a collective noun for the heads of departments in the state, the individual members not being so designated. In their separate offices they stand thus: 1. First Lord of the

Treasury; 2. the Lord Chancellor; 3. Chancellor of the Exchequer; 4. Lord President of the Council; 5. Lord Privy Seal; 6. Secretary of State for the Home Department; 7. Secretary of State for the Foreign Department; 8. Secretary of State for the Colonial Department; 9. First Lord of the Admiralty; 10. President of the Board of Controul; 11. Chancellor of the Duchy of Lancaster; 12. Commander-in-chief of the Forces; 13. Secretary at War; 14. First Commissioner of Woods. All these usually form the cabinet. The following ministers do not belong to the cabinet: 15. Chief Secretary for Ireland; 16. Postmaster General; 17. Lord Chamberlain; 18. Lord Steward; 19. Master of the Horse; 20. President of the Board of Trade; 21. Vice-President of the Board of Trade; 22. Master of the Mint; 23. Paymaster General; 24. Attorney-General; 25. Solicitor-General. The prime minister, who is generally the First Lord of the Treasury, is the person who receives the sovereign's order to form a ministry, *i. e.*, to appoint men of his own sentiments to fill the chief offices. Those of the ministry who are peers, sit in the House of Lords; the others sit in the House of Commons, in virtue of being returned thither, which is indispensable.

A foreign minister is usually called an ambassador.

In religion, a pastor of a church, chapel, or meeting-house, to perform public worship, &c.

MINISTERIAL, attendant; acting under superior authority.

MINISTRI REGIS (ministers of the king), applied to the Judges of the realm, and to all those who hold ministerial offices in the government. 2 *Inst.* 208.

MINISTRY [contracted from *ministry*], office; service.

MINOR, a person under age, who is not yet arrived at the power of ministering his own affairs, or the possession of his estate. See **INFANT**.

Minor ante tempus agere non potest in casu proprietatis nec etiam convenire; differatur usque ætatem; sed non cadit breve. 2 *Inst.* 291.—(A minor before majority cannot act in a case of property, nor even to agree; it should be deferred until majority; but a writ does not fail.)

Minor jurare non potest. Co. Lit. 172 b.—(A minor cannot swear.)

Minor 17 annis, non admittitur fore executor. 6 Co. 67.—(A minor under 17 years of age is not admitted that he should be an executor.)

Minor minorem custodire non debet; alios enim præsumitur male regere qui seipsum regere nescit. Co. Lit. 88.—(A minor cannot be guardian to a minor, for he is presumed to direct others badly who knows not how to direct himself.)

Minor non tenetur respondere durante minori ætate; nisi in causâ dotis, propter favorem. 3 Bulst. 143.—(A minor is not bound to

reply during his minority, except in a cause of dower, on account of favour.)

Minor, qui infra ætatem 12 annorum fuerit, utlagari non potest, nec extra legem poni, quia ante talem ætatem, non est sub lege aliqua, nec in decennia. Co. Lit. 128.—(A minor who is under 12 years of age, cannot be outlawed, nor placed without the law, because, before such age, he is not under any law, nor in a decennary.)

MINORA REGALIA, the lesser prerogatives of the Crown.

MINORESS, a female under age.

MINORITY [*minor*, Lat.], the state of being under age, *i. e.*, 21 years; also the smaller number.

MINT [*moneta*, Lat., *mynet*, Sax., money, from *mynetian*, to coin], the place where money is coined, in or near to the Tower of London. 57 Geo. III., c. 67; 1 & 2 Wm. IV., c. 10; 2 Wm. IV., c. 34; 1 *Hale*, 213.

Also, a pretended place of privilege in Southwark, near the Queen's prison, where persons sheltered themselves from justice, under the pretext that this place was an ancient palace of the Crown. It is now abolished; and the statutes 8 & 9 Wm. III., c. 27; 9 Geo. I., c. 28; 11 Geo. I., c. 22; and 1 Geo. IV., c. 116, enact, that persons opposing the execution of any process in such pretended privileged places within the bills of mortality, or abusing any officer in his endeavour to execute his duty therein, so that he receives bodily hurt; and all persons aiding and abetting such opposition, shall be felons, and be transported for seven years.

MINT-MARK. It has been always usual to oblige the masters and workers of the mint, in the indentures made with them, "to make a privy mark in all the money that they make, as well of gold as of silver, so that another time they might know, if need were, and witte what monies of gold and silver among other of the same monies, were of their own making and which not." The masters and workers of the mint, after every trial of the pix at Westminster, having there proved their monies to be lawful and good, are immediately entitled to receive their *quietus* under the Great Seal, and to be discharged from all suits or actions concerning those monies; it is then usual for the said masters and workers to change the privy mark before used for another, that so the monies from which they are not yet discharged might be distinguished from those for which they had already received their *quietus*, which new mark they then continue to stamp upon all their monies, until another trial of the pix gave them also their *quietus* concerning those. *Encyc. Lond.*

MINT-MASTER, one who presides in coinage.

MINTAGE, that which is coined or stamped.

MINUTE TITHES [*minores decimæ*]. Small tithes, such as usually belong to a vicar, as of wool, lambs, pigs, butter, cheese, herbs, seeds, eggs, honey, wax, &c.

MIS, an inseparable particle used in composition, to mark an ill sense or depravation of the meaning, as miscomputation or misaccounted, *i. e.*, false reckoning. The several words following are illustrations of the force of this monosyllable. *Todd's Johnsons' Dict.*

MISA, a compact, a firm peace. *Old Records.*

MISADVENTURE, *excusable homicide by*, also termed homicide *per infortunium*; it arises where a man, doing a lawful act, without any intention of hurt, unfortunately kills another, as where a man is at work with a hatchet, and the head of it flies off and kills a bystander, or where a person is shooting at a mark and undesignedly kills a man, for the act is lawful and the effect is merely accidental. So where a parent is moderately correcting his child, a master his apprentice or scholar, or an officer punishing a criminal, and happens to occasion his death, it is only misadventure, for the act of correction was lawful; but if he exceed the bounds of moderation, either in the manner, the instrument, or the quantity of punishment, and death ensues, it is manslaughter at least, and in some cases, according to the circumstances, murder, for the act of immoderate correction is unlawful. *Fost. 275; 4 Step. Com. 101.*

MISALLEGE, to cite falsely as a proof or argument.

MISCARRIAGE, PRODUCING. See **ABORTION.**

MISCOGNISANT, ignorant of, unacquainted with.

MISCONTINUANCE, cessation, intermission.

MISDEMEANOUR, a species of crime or offence comprehending all breaches of public law less than felony, as perjury, libels, conspiracies, assaults, &c., which are not so atrocious as murder, burglary, arson, &c., which are felonies.

MISE, disbursement, costs; also, a tax or tallage, &c.; also, the issue in a writ of right. It is sometimes corruptly used for *mease* or *mees*, *i. e.*, a message.

MISE-MONEY, money paid by way of contract or composition to purchase any liberty, &c. *Blount.*

Miseri est servitus, ubi jus est vagum aut incertum. 4 Inst. 246.—(Obedience is miserable, where the law is vague and uncertain.)

MISERERE (have mercy). The name and first word of one of the penitential psalms, being that which was commonly used to be given by the ordinary to such condemned malefactors as were allowed the benefit of clergy: whence it is also called the psalm of mercy.

MISERECORDIA, an arbitrary amerciamento or punishment imposed on any person for an offence. It is thus called, according to Fitzherbert, because it ought to be but small and less than that required of Magna Charta. *Anc. Inst. Eng.*

Also, a discharge of all manner of amerciements, which a person might incur in the forest. See **CAPIAS PRO FINE.**

MISERECORDIA COMMUNIS, a fine set on a whole county or hundred.

Misericordia domini regis est, quod quis per juramentum legalium hominum de vicineto eatenus amerciandus est, ne aliquid de suo honorabili contenmento amittat. Co. Lit. 126.—(The mercy of our lord the king is that by which every one is to be amerced by a jury of good men from his immediate neighbourhood, lest he should lose any part of his own honourable tenement.)

MISEVENIRE, to fail or succeed ill.

MISFEAZANCE, a misdeed or trespass; also, the improper performance of some lawful act.

MISFEAZANT, a trespass.

MISFEAZOR, a trespasser.

MISFORTUNE. See **CHANCE.**

MISJOINDER, joining parties in a suit or action, who ought not to have been so joined.

In equity, if the misjoinder be of parties as plaintiffs, all the defendants may demur. If the misjoinder be of parties as defendants, those only can demur who are improperly joined. The improperly joining two different causes of suit in one bill is technically denominated multifariousness: which see.

The misjoinder of plaintiffs, in an action at common law, is a ground of nonsuit, as also is a joinder of too many defendants. In the case of a misjoinder of counts in a declaration, the error may be remedied by entering the verdict on the good counts, unless the jury find general damages, when the defendant may arrest the judgment or bring a writ of error.

Where several persons join in the commission of an offence, all, or any number of them may be jointly indicted for it, or each of them may be indicted separately. Misjoinder of defendants may be made the subject of demurrer, motion in arrest of judgment, writ of error, or the court may quash the proceedings.

MISKENNING, a wrongful citation. *Du Cange; Anc. Inst. Eng.*

MISNOMER, a wrong name.

In real and mixed actions at common law a misnomer is a ground for abatement, but no plea in abatement for a misnomer shall be allowed in any personal action; but in all cases in which a misnomer would, but for the following act, have been pleadable in abatement, the defendant shall be at liberty to cause the declaration to be amended at the plaintiff's costs, by inserting the right name. And this is done by taking out a summons before a Judge at chambers, founded on an affidavit of the right name, and in case the summons shall be discharged, the costs of such application shall be paid by the party applying, if the Judge shall think fit. 3 & 4 Wm. IV., c. 42, § 11. Where a plaintiff has sued a defendant by his wrong Christian name, but has declared against him by his right Christian name, the proceeding is regular under the foregoing act of Parliament.

Misnomers in proceedings are now frequently amended by the court, provided the other parties have neither been misled nor prejudiced by them. And by 7 Geo. IV., c. 64, § 19, no indictment or information shall be abated by reason of any dilatory plea of misnomer, or of want of addition, or of wrong addition of the party offering such plea; but if the court shall be satisfied, by affidavit or otherwise, of the truth of such plea, it shall forthwith cause the indictment or information to be amended according to the truth, and call upon the party to plead thereto, and proceed as if no such dilatory plea had been pleaded.

MISPLEADING. See **JEOFAILS**.

MISPRISION [*mépris*, Fr.], neglect, negligence, or oversight.

All such high offences as are under the degree of capital, but nearly bordering thereon, are misprisions; and it is said that a misprision is contained in every treason and felony whatsoever, and that, if the Crown so please, the offender may be proceeded against for the misprision only. And upon the same principle, while the Court of Star Chamber subsisted, it was held that the Sovereign might remit a prosecution for treason, and cause the delinquent to be censured in that court, merely for a high misdemeanour; as happened in the case of Roger, Earl of Rutland, in 43 Eliz., he having been concerned in Essex's rebellion. Every great misdemeanour, according to Coke, which has no certain term appointed by the law, is sometimes called a misprision.

Misprisions are divided in the text-books into two kinds:—

1. *Negative*, consisting in the concealment of something which ought to be revealed, such is *misprision of treason*, which is the bare knowledge and concealment of treason, without any degree of assent thereto; for any assent makes the party a principal traitor; as indeed the concealment, which was construed aiding and abetting, did at the common law; but it was enacted, by statute 1 & 2 Ph. & M., c. 10, that a bare concealment of treason shall be only held a misprision. Information will not lie for this offence, but indictment, as for capital crimes. There must be two witnesses at least to support the case. 7 Wm. III., c. 3; 1 Hale P. C. 374; 4 Step. Comm. 199.

Besides the last described offence, the mere concealment of a felony is criminal, and is called *misprision of felony*; but if there be an assent, this makes the person assenting either a principal or accessory. *Theftbote*, and *concealing treasure-trove*, are each of them species of negative misprision.

2. *Positive*, otherwise denominated contempt or high misdemeanours, such as the mal-administration of such high officers as are in public trust and employment, usually punishable by parliamentary impeachment; also, embezzlement of the public money, punishable by fine and imprisonment; also, such contempts of the executive magistrate

as demonstrate themselves by some arrogant and undutiful behaviour towards the Sovereign and government. And to endeavour to dissuade a witness from giving evidence, to disclose an examination before the Privy Council, or to advise a prisoner to stand mute (all of which are impediments to justice), are high misprisions and contempts of the courts, and punishable by fine and imprisonment.

Misprisions of clerks, &c., relate to their neglect in writing or keeping records, and here misprision signifies a mistaking.

MISRECITAL, a wrong recital. If it be in the beginning of a deed, which goes not to the end of a deed, it shall not hurt, but if it go to the end of a sentence, so that the deed is limited by it, it is vicious. *Cartb.* 149.

MISSA, the mass.

MISSAL, the mass-book.

MISSATICUS, a messenger. *Old Records*.

MISSÆ PRESBYTER, a priest in orders. *Blount*.

MISSIVE, a letter sent.

MISSURA, the ceremonies used in the Romish Church to recommend and dismiss a dying person.

MISTAKE, misconception, error.

In courts of equity, it is considered as sometimes the result of accident, in its large sense; but, as contradistinguished from it, it is some unintentional act, or omission, or error, arising from ignorance, surprise, imposition, or misplaced confidence. It is of two sorts: (1), mistakes in matters of law; and (2), mistakes in matters of fact.

It must not be understood that every kind of mistake is relievable in equity; for though equity will relieve against a plain mistake or misapprehension, or against ignorance of title, yet equity will not interpose, if the fact were, from its nature, doubtful, or, at the time of the agreement equally unknown to both parties, as in the case of a contract for a piece of ground, which was to be enclosed for 20*l.*; and upon a bill for specific performance, the defence was, that it was worth 200*l.*; and although the contract was to be performed *in future*, yet neither party knowing the value, the Master of the Rolls decreed the performance. Or, if there had been a long acquiescence under the mistake, and neither party was aware of it. Neither will equity avoid an agreement entered into to prevent family disputes, though founded upon mistake; nor an agreement entered into to save the honour of a family; nor will equity decree a forfeiture after an agreement, in which, if there be any mistake, it was the mistake of all the parties to it. This doctrine is carried to a very considerable extent, in the following case, in which it was held that a tenant who had paid an annuity charged on land, without deducting the proportion of the taxes to which such annuity was liable, and which the tenant had paid, could not recover back the same by a bill in equity. 1 Fonb. 116.

Where a deed is made on good consideration (it is different where the conveyance is voluntary, unless it be in favour of a wife or a legitimate child), equity will supply a defect in the execution, and if a bargain and sale be made, and it is not enrolled within six months in one of the courts of Westminster Hall, or with the *custos rotulorum* of the county, equity will compel the vendor to make a good title by executing another bargain and sale, which may be enrolled.

Equity, therefore, will supply any defects of circumstances in conveyances, as of livery of seisin, in the passing of a freehold, or of the surrender of a copyhold, or the like. Also, all misprisions in deeds, as of the names of the parties, or the sum in a bond: and an award or charter party, though void or defective at law, may find relief here. Nor shall any fiction of the common law, as the extinguishment of a covenant by marriage, prevent the interposition of this court; for equity regards not the outward form, but the inward substance and essence of the matter, which is the agreement of the parties upon a good and valuable consideration, and where the persons interested fully intend to contract a perfect obligation, though by mistake or accident they omit the set form of law, so that no remedy is to be had to compel a performance of it in courts of civil judicature, yet are they bound, in natural justice, to stand to their own agreement. 1 *Fonbl.* 37.

It is to be particularly observed, however, that this remedial power of courts of equity does not extend to the supplying of any circumstance, for the want of which the legislature has declared the instrument to be void, as for instance where it wants the necessary stamps.

Equity will supply any defect in the execution of a power, provided the same be for a good or valuable consideration; but equity will not, as a general rule, supply the non-execution of a power; but though the legal effect of the non-execution of a power is, that the property would go to a third person, yet if the court can see that the power is coupled with a trust, to the execution of which the party looked with confidence, the failure or negligence of the trustee will not be permitted, in equity, to disappoint those objects. *Sugd. Pow.* 395—401, 4th ed.

Mistakes in the execution of powers, by will, have been endeavoured to be remedied by a peculiar construction of such wills. Hence the doctrine of *cy près*, in regard to excessive executions of powers by will affecting real estates. The doctrine of *cy près* does not apply to personalty. Under a power to appoint to children, an appointment by will to a child for life, with remainder to her children, is not valid, and the excess (the remainder to the children) is void; but this remainder is not considered as unappointed, and to go accordingly, for the court will appoint it *cy près*, as near to

the intention of the giver of the power as possible, and consider the child as taking an estate tail. This doctrine of *cy près* has not, however, been much approved, and has gone, Lord *Kenyon* observes, "to the utmost verge of the law;" and Lord *Eldon* has said, "it is not proper to go one step farther." Where there is an excess in an appointment under a power executed by deed, the doctrine of *cy près* is not applicable, as in the case of wills; but in such case the appointment under the power is void, so far as relates to the excess, and so far only: the execution of it is effectual to the extent allowed by the power; *valeat quantum valere potest*.

It has been held that a mistake of parties as to the law, is not a ground for reforming a deed founded on such mistake, and generally speaking it is so; *alioquin erranti luero esset ignorantia juris*; for instance, if two persons are bound in a joint obligation, and the obligee release one of them, not supposing that he thereby discharged the other, as in law he does; yet the rule *ignorantia juris non excusat* applies, and equity will not interfere.

Fonblanque thus expresses himself upon this subject:—The receiving of money, which, consistently with conscience, cannot be retained, is in equity sufficient to raise a trust in favour of the party from whom or on whose account it was received; but in applying this rule to payments by mistake, it is material to distinguish mistakes which proceed from ignorance of the law, from those mistakes which are founded on the misapprehension of some fact. With respect to mistakes proceeding from ignorance of law, it is by no means true that they are universally relievable in equity, or in an equitable action at law, as when a man, not knowing that he was discharged from a debt by the Statute of Limitations, pays the debt; or being bound in honour and conscience to any particular payment, makes such payment; for in all cases in which money is to be recovered back, merely upon principles of equity, the governing question is, whether the defendant can with a safe conscience retain what he has received: but if money which there was no ground to claim in conscience be paid on a mistake of fact, it may be recovered back, except where it is paid into court, in which case it cannot.

If instruments be delivered up by mistake, and owing to ignorance of a transaction which would have made it conscientious to hold the instrument and proceed at law, a court of equity will relieve. *East India Company v. Donald*, 9 *Ves.* 275.

In all those cases where a mistake in a will is relieved, it must appear on the face of the will, otherwise equity will not relieve. Where there is a complete and plain will in writing, it cannot be altered or influenced by parol evidence as to the intention. Evidence as to matter *dehors* (out of) the will, to show the mistake, is not sufficient, even

the instructions for the will are inadmissible for that purpose. The mistake must be clear and demonstrable; and wherever there is a clear mistake, or a clear omission, recourse is to be had to the general scope of the will, and the general intention to be collected from it; but the first thing to be proved is, that there is a mistake. Parol evidence, however, is admissible upon a *latent*, not a *patent* ambiguity; a latent ambiguity being that which is raised by the evidence, which removes the doubt. *Per Lord Eldon, 4 Dow. 75.*

A mistake in the name of a legatee may be corrected in favour of the legatee by circumstances of description, sufficiently pointing out the person entitled to take; as a mistake in the christian or surname, or both. So in the case of a legacy, parol evidence is admissible to explain a nick-name, or where there are two persons of the same name, but not to fill up a blank in a will, unless it be as to a christian name, or to prove who was meant by the initial of a surname, as where a legacy was left to Mrs. G. In cases where evidence is admitted and operates, it must be conclusive to have effect; if it afford only a high degree of probability, it is insufficient.

Where a will is corrected by mistake, or on a presumption that a latter will is good, which proves void, this will not let in the heir but is relieved against in equity. *Madd. Ch. vol. i. 96, et seq.*

The question often arises, in cases of fraud, and mistake, and acknowledgement of debts, at what time the bar of the Statute of Limitations begins to run. Generally, then, the rule of equity is, that the cause of action or suit arises when and as soon as a party has the right to apply to a court of equity for relief. In cases of fraud or mistake, it will begin to run from the time of the discovery of such fraud or mistake, and not before. *2 You. & Coll. 58.*

Where money has been paid under a mistake to one who is not entitled to receive it, and who has no claim in conscience to retain it, it can be recovered; yet, although the money was paid under a mistake of fact, if the party might have and ought to have known the fact, he cannot recover it. And money paid under a knowledge of all the facts, or where the party possesses full means of knowledge, cannot be recovered on the ground that the plaintiff mistook the law. *2 Stark. Evid. 86.*

Oral evidence is admissible in courts of law for the purpose of correcting a mistake, for the intrinsic evidence is not offered to contradict a valid existing instrument, but to show that, from accident or negligence, the instrument in question has never been constituted the actual depository of the intention and meaning of the parties. *1 Freem. 264.*

In criminal cases a mistake of fact is an excuse, as when a man, intending to do a lawful act, does that which is unlawful. An

error, however, in point of law, is no excuse, for *ignorantia juris, quod quisque tenetur scire, neminem excusat.* *Plowd. 343.*

MISTERY [*métier* Fr.], a trade or calling.

MISTRIAL, an erroneous trial.

MISUSER, abuse of any liberty or benefit which works a forfeiture of it.

MITIGATION, abatement of anything penal, harsh, or painful.

MITTENDO MANUSCRIPTUM PEDIS FINIS, an abolished judicial writ addressed to the treasurer and chamberlain of the exchequer to search for and transmit the foot of a fine, acknowledged before justices in eyre, into the Common Pleas. *Reg. Orig. 14.*

MITTER LE DROIT, to pass a right. See **RELEASE**.

MITTER L'ESTATE, to pass an estate. See *Ibid.*

MITTIMUS (we send), a writ for removing and transferring records from one court to another. Also, a precept or command in writing, directed to the gaoler or keeper of some prison for the receiving and safe keeping of an offender charged with any crime, until he be delivered by due course of law. Also, when the venue in a common law action is laid in a county palatine (Lancaster or Durham), instead of an award of the venire in the issue, a special award of a *mitimus* to the justices there is inserted, commanding them to issue the jury process, and, when the cause is tried, to return the record to the superior court. A writ of *mitimus* is issued instead of the *venire facias*.

Mitius imperanti melius paretur. 3 Inst. 24. —(He is better obeyed who commands leniently.)

MITTRE A LARGE, to set or put at liberty.

MIXED ACTIONS, suits at common law partaking of the nature of real and personal actions, by which some real property is demanded, and also personal damages for a wrong sustained. They substantially partake, however, of the character of real actions, and are often so called, but they are now abolished, except the action of ejectment. 3 & 4 Wm. IV., c. 27. Correctly, however, ejectment is in its form a species of the personal action of trespass. *Step. Plead., app. vii.*

Those in Roman law, in which some specific thing was demanded, and where also some personal obligations were claimed to be performed. *Halifax on Roman Law, 85.*

MIXED GOVERNMENT, a form of regal establishment, combining monarchy, aristocracy, and democracy, like our own constitution.

MIXED LARCENY, otherwise called compound or complicated larceny, that which is combined with circumstances of aggravation or violence to the person, or taking from a house. See **LARCENY**.

MIXED LAWS, those which concern both persons and property.

MIXED QUESTIONS [*questions mixtes*], those which arise from the conflict of foreign and domestic laws.

MIXED QUESTIONS OF LAW OR FACT, cases where a jury are to find the particular facts, and where the court can decide upon the legal quality of those facts by the aid of established rules of law, independently of any general inference or conclusion to be drawn by a jury. All technical expressions, such as asportation, conversion, acceptance, &c., are, in their application, partly matters of law, partly matters of fact.

Yet the terming any question a mixed question of law and fact, is chargeable with some degree of indistinctness. Questions of law and fact are not in strictness ever mixed. It is always for the jury to decide the one, and the court the other, however complicated the case may be. In some cases the main difficulty may consist in ascertaining the facts, where the application of the law to the ascertained facts admits of no doubt; in another the facts may be clear and simple, and their legal effect doubtful; but still in each case the provinces of the court and jury are perfectly plain and distinct. It is true that, in some instances, the court could not, without the aid of a conclusion of fact drawn by a jury, apply the law; but this consideration does not properly occasion any intermixture of a confusion of the respective functions of the court and jury; for the latter, in drawing their conclusion, still confine themselves to mere matters of fact. 6 *East*, 3; 1 *T. R.* 167.

MIXED SUBJECTS OF PROPERTY, such as fall within the definition of things real, but which are attended nevertheless with some of the legal qualities of things personal, as emblements, fixtures, and shares in public undertakings connected with land. Besides these, there are others which, though things personal in point of definition, are, in respect of some of their legal qualities, of the nature of things real; such are animals *feræ naturæ*, charters and deeds, court rolls and other evidences of the land, together with the chests in which they are contained, ancient family pictures, ornaments, tombstones, coats of armour, with pennons and other ensigns, and especially heirlooms.

MIXED TITHES, tithes of wool, milk, pigs, &c., consisting of natural products, but nurtured and preserved in part by the care of man.

MIXTUM, a breakfast, or a certain quantity of bread and wine. *Cowell*.

MIZMOR [Span.], a dungeon. *Phillips*.

MOBLES, moveable goods; furniture. *Obsolete word*.

MODEL, a representation in little of something made or done. The 54 *Geo. III.*, c. 56, gives a copyright in models.

MODERATA MISERECORDIA, a writ founded on *Magna Charta*, which lies for him who is amerced in a court not of record, for any transgression beyond the quality or quantity of the offence; it is addressed to the lord of the court, or his bailiff, commanding him to take a moderate amercia-

ment of the parties. *N. N. B.* 167; *F. N. B.* 76.

MODIATIO, a certain duty paid for every tierce of wine. *Mon. Angl. t. ii. p.* 994.

MODIFICATION, an ascertaining, by a commission of teinds (tithes), the amount of stipend to a minister of a parish. *Scotch Term*.

MODIUS, a measure, usually a bushel.

MODIUS TERRÆ VEL AGRI, a quantity of ground containing in length and breadth 100 feet. *Mon. Angl. iii.* 200.

MODO ET FORMA (in manner and form), a phrase used in pleading.

It is the nature of a traverse to deny the matter of fact in the adverse pleading, in the *manner and form* in which it is alleged, and, therefore, to put the opposite party to prove it to be true in *manner and form* as well as in general effect. A traverse, when in the negative, generally denies the last pleading, *modo et formâ* (in manner and form as alleged). The plea of *non est factum*, and the replication *de injuriâ*, are almost the only negative traverses that are not pleaded *modo et formâ*.

These words, however, though usual, are said to be in no case strictly essential, so as to render their omission cause of demurrer.

It is always enough to prove the *substance* of an allegation. *Step. Plead.* 219.

MODUS DECIMANDI, a particular manner of tithing arising from immemorial usage, differing from the payment of one-tenth of the annual increase.

It is sometimes a pecuniary compensation; as twopence per acre for the tithe of land; sometimes it is a compensation in work and labour, as that the parson shall have only the twelfth cock of hay, and not the tenth, in consideration of the owner's making it for him: sometimes in lieu of a large quantity of crude or imperfect tithe, the parson shall have a less quantity when arrived to greater maturity; as a couple of fowls in lieu of tithe eggs: and the like. Any means, in short, whereby the general law of tithing is altered, and a new method of taking them is introduced, is called a *modus decimandi*, or special manner of tithing.

To make a good and sufficient *modus*, the following rules must be observed:

1. It must be certain and invariable.
2. The substitution must be beneficial to the parson, and not for the emolument of third persons only.
3. It must be something different from the thing compounded for.
4. The payment of one species of tithe will not discharge a *modus* for another.
5. The substitution must be in its nature as durable as the tithes discharged by it.
6. The *modus* must not be too large, for that is a *rank modus*.
7. By 2 & 3 *Wm. IV.*, c. 100, it is provided that when tithe is demanded by any lay person, not being a corporation sole, or by any corporation aggregate, any *modus* or dis-

charge set up in answer to such claim shall be deemed valid, upon evidence showing an usage in support of it for thirty years, unless it can be met by evidence that such usage has been by virtue of some agreement in writing, or that before the thirty years the usage was different; and a *modus* or discharge shall in such case be deemed absolutely valid, upon evidence showing an usage for as much as sixty years in support of it, unless it be proved to have been by virtue of some agreement in writing. And, further, that when tithe is demanded by any bishop, parson, or other corporation sole, any claim of *modus* or discharge shall be valid and indefeasable upon evidence of usage during the whole time that two persons in succession shall have held the benefice, and for three years after the institution of a third incumbent, unless it shall be proved that such usage was by some agreement in writing; provided always, that if the whole time of the holding of such two persons shall be less than sixty years, then it shall be necessary to shew such usage, not only during the whole of such time, but also during such further period as shall, with such time, be sufficient to make up the full period of sixty years, and the further period of three years aforesaid.

Modus de non decimando non valit.—(An agreement not to take tithes avails not.)

Modus et conventio vincunt legem. 2 Co. 73.—(Custom and agreement overrule law.)

Modus legem dat donationi. Co. Lit. 19.—(Agreement gives law to the gift.)

MODUS RANK, an excessive *modus*.

MOERDA, the secret killing of another; murder. *Teutonic word.*

MOIETY [*moitié*, Fr.], one of two equal parts.

MOLENDINUM, a mill. *Old Records.*

MOLENDUM, a grist; a certain quantity of corn sent to a mill to be ground.

MOLITURA or MOLTA, the toll or multure paid for grinding corn at a mill.

MOLITURA LIBERA, free grinding or liberty of a mill, without paying toll. *Paroch. Antiq.* 236.

MOLLAH [Arabic], a doctor of laws.

MOLLIS-BÆDLING. See BÆDLING.

MOLLITER MANUS IMPOSUIT. An officer may lay hands upon another to turn him out of church (for instance), and prevent his disturbing the congregation; and if sued for this and the like battery, he may set forth the whole case, and plead that he laid hands upon him gently (*molliter manus imposuit*) for this purpose. *S. C.*, 1 *Sand.* 10.

MOLMAN, a man subject to do service. *Old Records.*

MOLTURA. See MOLITURA.

MOLMUTIAN or MOLMUTIN LAWS.

The laws of Dunvallo Molmutius, sixteenth King of the Britons, who reigned above four-hundred years before the birth of Christ. They obtained in this country until the reign of the Conqueror. These were the first published laws in Briton; these laws, together with those of Queen Mercia, were translated by Gildas into Latin. *Usher's Primord.* 126.

MOLNEDA, MULNEDA, a mill-pond or pond. *Paroch. Antiq.* 135.

MOLTA. See MOLITURA.

MONACHISM, the state of monks. *Milton's Hist. of Eng.; Bingham's Christ. Antiq.*

MONARCHY [*μ὆ναρχος*, Gk.], a government in which the supreme power is vested in a single person. Where a monarch is invested with an absolute power, the monarchy is termed despotic: where the supreme power is virtually in the laws, though the majesty of government and the administration is vested in a single person, it is a limited monarchy. It is hereditary, where the regal power descends immediately from the possessor to the next heir by blood, as in our country; or elective, where the choice depends upon all who enjoy the benefit of freedom, as was formerly the case in Poland.

MONASTICON, a book giving an account of monasteries, convents, and religious houses.

MONETAGIUM, called also *focagium*, a certain tribute paid by tenants to their lords every third year, that he should not change the money which he had coined, when it was formerly lawful for certain great men to coin in their territories; but not of silver and gold. Abrogated by 1 *Hen. I.*, c. 2.

Also a mintage, and the right of coining or minting money.

Moneta dicitur à monendo, quia impressione monet nos cujus sit moneta. Dav. 18.—

(Money is called from *monendo*, because by the impression it warns us whose money it may be.)

Moneta est justum medium et mensura rerum commutabilium, nam per medium monete fit omnium rerum conveniens et justa æstimatio. Dav. 18.—(Money is the just medium and measure of all commutable things, for by the medium of money a convenient and just estimation of all things is made.)

Monetandi jus comprehenditur in regalibus quæ nunquam à regio sceptro abdicantur. Dav. 18.—(The right of coining money is comprehended amongst those rights of royalty which are never separated from the kingly sceptre.)

MONEY [*moneta*, from *monendo*, because by the impression upon it we are warned whose it is], the wheel of circulation, the great instrument of commerce, the coining of which belongs, in all states, to the sovereign power. *Monetandi jus comprehenditur in regalibus quæ nunquam a regio sceptro abdicantur.* Dav. 18.—(The right of coining money is comprehended amongst those rights of royalty which never depart from the kingly sceptre.) The materials of which it is made are gold, silver, copper, and paper; its currency and the intrinsic or denominated value put upon it are exercised as prerogatives of the Crown. It may be said that the substitution of paper for gold or silver, replaces a very expensive medium of commerce for one much less costly, and sometimes more convenient, the expediency and operation of which substitution belongs to the political economy of a state; and the sixth section of

the 3 & 4 Wm. IV., c. 98, declares that bank notes shall be a legal tender for all sums above 5*l.*, except at the Bank of England and its branch banks; and the 56 Geo. III., c. 68, make silver, not exceeding 40*s.*, a legal tender. Copper money not exceeding five-pence three farthings may be tendered. The word "sterling," so often found in deeds, as applied to money, seems to be derived from *Easterlings*, a company of merchants, who shortly after the Norman Conquest were employed in regulating the coinage, and means "English coined money."

For an account of the Saxon and Norman money consult *Anc. Inst. Eng.*

MONEY-BILL, in parliamentary language an act by which money is directed to be raised upon the subject, for any purpose or in what shape soever, either for governmental exigencies, and collected from the whole kingdom generally, or for private benefit, and collected in any particular district, as parish rates.

With respect to these bills, the House of Commons are so reasonably jealous of their privilege of framing new taxes for the subject, that they will not suffer the House of Lords to exert any other power but that of rejection: they will not permit the least alteration or amendment to be made by the House of Lords to the mode of taxing the people by bills of this nature.

MONEY-BROKER, a money changer; a scrivener or jobber; one who lends or raises money to or for others.

MONEY-LAND. In equity, land articed or devised to be sold, and turned into money, is reputed as money; and money articed or bequeathed to be invested in land, has, in equity, many of the qualities of real estate, and is descendible and devisable as such according to the rules of inheritance in other cases, and this upon the ground that equity regards substance and not form, and will further the intention of parties. See *LAND*. 2 *Story's Eq. Jurisp.* 87.

The authorities to shew that money directed or agreed to be laid out in land is to be considered as land, are very numerous. "The force of the rule," observes Fonblanque (1 *Eq. R.* 1, c. 6, § 9, n. 1), "is particularly evinced by those cases in which it has been held, that the money agreed or directed to be laid out, so fully becomes land, as, 1st, not to be personal assets; 2ndly, to be subject to the courtesy of the husband, and it should now seem to the dower of the wife (3 & 4 Wm. IV., c. 105); 3rdly, to pass as land by will, if subject to the real use at the time the will was made; 4thly, not to pass as money by a general bequest to a legatee, but it will by a particular description, as so much money to be laid out in land, or by a bequest of all the testator's estate in law and equity. But equity will not consider money as land, unless the covenant or direction to lay it out in land be express."

The 7 Geo. IV., c. 45, which repealed the

39 & 40 Geo. III., c. 56 (commonly called Lord Eldon's Act), for barring *quasi* entails of money directed to be laid out in lands to be settled, was repealed by 3 & 4 Wm. IV., c. 74, except so far as related to proceedings commenced under it, before the 1st of January, 1834. It enacts (§ 71) that lands to be sold of any tenure where the money arising from sale thereof shall be subject to be invested in the purchase of lands to be settled, so that any person, if the lands were purchased, would have an estate-tail therein, and also money subject to be invested in the purchase of lands to be settled, so that any person, if the lands were purchased, would have an estate tail therein, shall, for the purposes of the act, be treated as the lands to be purchased, and be considered subject to the same estates as the lands to be purchased would have been actually subject to: and all the previous clauses of the act, so far as circumstances will admit, shall, in the case of lands to be sold (except copyhold), apply to such lands in the same manner as if the lands to be purchased with the money to arise from the sale thereof were directed to be freehold, and were actually purchased and settled; and shall, in the case of lands to be sold as aforesaid, being copyhold, apply to such lands, as if the lands to be purchased with the money to arise from the sale thereof were directed to be copyhold, and were actually purchased and settled; and shall, in the case of money subject to be invested in the purchase of land to be so settled as aforesaid, apply to such money in the same manner as if such money were directed to be laid out in the purchase of freehold lands, and such lands were actually purchased and settled; except that where the disposition shall be of leasehold or of money so circumstanced as aforesaid, such leasehold or money, shall, as to the person in whose favour or for whose benefit the disposition is to be made, be treated as personal estate; and except as to bankruptcy, the deed of disposition thereof shall be an assignment by deed to be enrolled in Chancery within six calendar months after its execution; and in every case of bankruptcy the disposition of such leasehold or money shall be made by the commissioners, and completed by enrolment, as before directed in regard to lands not held by copy of court roll.

MONGER [*mangian*, Sax., to trade], a dealer or seller. It is seldom or never used alone, or otherwise than after the name of any commodity, to express a seller of such commodity.

Also, a little fishing-vessel. 13 *Eliz.*, c. 11.

MONIERS or **MONEYERS**, ministers of the Mint; also, bankers. *Cowell*.

MONIMENT, a memorial, superscription, or record.

MONITORY LETTERS, communications of warning and admonition sent from an ecclesiastical Judge, upon information of scandals and abuses within the cognizance of his court.

MONOGAMY [μόνος, Gk., single, and γάμος, marriage], marriage of one wife.

MONOMACHY [μόνος, Gk., and μάχη, fight], a duel; a single combat.

It was anciently allowed by law, for the trial or proof of crimes. It was even permitted in pecuniary causes, but it is now forbidden both by the civil and canon laws.

Monopolia dicitur, cum unus solus aliquod genus mercaturæ universum emit, pretium ad suum libitum statuens. 11 Co. 86.—(It is so called, monopoly, when one person alone buys up the whole of one kind of commodity, fixing a price at his own pleasure.)

MONOPOLY [μόνος, Gr., single, and πωλέω, to sell], the exclusive privilege of selling any commodity. A license or privilege allowed by the Crown, for the sole buying, selling, making, working, and using of anything whatsoever, whereby the subject is restrained from that liberty of manufacturing or trading which he had before.

Such grants were very common previously to the accession of the house of Stuart, and were carried to a very oppressive and injurious extent during the reign of Queen Elizabeth. The grievance became at length so insupportable, that, notwithstanding the opposition of government, which looked upon the power of granting monopolies as a very valuable part of the prerogative, they were abolished by the famous act of 1624, the 21 Jac. I., c. 3. This act declares that all monopolies, grants, letters patent for sole buying, selling, and making of goods and manufactures, shall be null and void. It excepts patents for fourteen years for the sole working or making of any new manufactures within the realm, to the true and first inventors of such manufactures, provided they be not contrary to law nor mischievous to the state. It also excepts grants by act of Parliament to any corporation, company, or society, for the enlargement of trade, and letters patent concerning the making of gunpowder. See **LETTERS-PATENT**.

A monopoly has three incidents mischievous to the public: 1st, the raising of the price; 2d, the commodity will not be so good; 3d, the impoverishing of poor artificers. 11 Rep. 86. All monopolies are against the ancient and fundamental laws of the realm, and can only be created by a grant from the Crown. 21 Jac. I., c. 3. See **LETTERS PATENT**.

MONSTER, an animal which has not the shape of mankind, but, in any part, evidently bears the resemblance of the brute creation, has no inheritable blood, and cannot be heir to any land, although it be brought forth in marriage; but though it have deformity in any part of its body, yet if it have human shape, it may be an heir. 2 Bl. Com. 246.

Buffon divides monsters into three classes: 1st, monsters by excess; 2d, monsters by defect; and, 3d, monsters by alteration or wrong position of parts. Frequent instances occur of an increased number of organs,

members, &c. Of monsters by defect, the most remarkable are those which are born without a head, and are hence styled *acephalous*. These live in the womb, but do not survive after birth, since the function of respiration cannot be performed. To this class also belong those which are destitute of lungs, or one or more organs of sense, &c. The defects of the third class are seldom discovered until after death, as they are commonly internal. Among the most remarkable instances of this nature, are those in which the rudiments or parts of a fœtus have been discovered.

As monsters by excess are *viable*, are capable of living, so by the law of France they are capable of inheriting.

The enlarged state of the clitoris, which is very common at birth, should not be mistaken for male organs. Foderé mentions cases where females have, in consequence of this, been inscribed in the baptismal registers as males; and in one case the individual was called out under the conscription law (vol. ii. p. 179).

Extra-uterine fœtuses have seldom been brought forth alive, or so as long to survive. *Beck's Med. Jurisp.* 221.

MONSTRANS DE DROIT (manifestation or plea of right), one of the common law methods of obtaining possession or restitution from the Crown of either real or personal property. It is preferred or prosecuted either on the common law or ordinary side of the Court of Chancery, or in the Exchequer.

Where the Crown is in possession under a title, the facts of which are already set forth upon record, a party aggrieved may *monstrans de droit*, which is, putting in, in opposition to such recorded title, a claim of right, grounded upon certain facts relied upon by the claimant, without denying those relied upon by the Crown, and praying the judgment of the court whether, upon those facts, the Crown or the subject had the right. 36 Edw. III., c. 13; 2 & 3 Edw. VI., c. 8. If the right be determined against the Crown, the judgment is that of *ouster le main*, or *amoveas manus*, by which judgment the Crown is instantly out of possession, which, therefore, needs no actual execution. *Chit. Prerog. of the Crown*, 345.

MONSTRANS DE FAITS OU RECORDS, showing of deeds or records.

Upon an action brought upon an obligation after the plaintiff has declared, he ought to show his obligation, and so it is of records. *Monstrans de faits* differ from *oyer de faits* in that he who pleads the deed or record, or declares upon it, ought to show it, and the defendant may demand *oyer* of the same. *Cowell*.

MONSTRAVERUNT, a writ which lay for tenants in ancient demesne, who held lands by free charter, when they were distrained to do unto their lords other services and customs than they or their ancestors used to do. It is, however, abolished.

MONSTRUM, the box in which relics are kept; also, a muster of soldiers. *Cowell.*

MONTH [*monath*, Sax., moon, which was formerly written *mone*, as month was written *moneth*. The period in which that planet *moneth*, i. e., completeth its orbit. *Tooke.* There are, however, no vestiges of a verb of this form in the Anglo-Saxon or any of the Gothic languages. *Jamieson.* The Saxon *monath* is from *mona*, the moon; and the Gothic *menath*, from *mena*, the same; *μήνη*, Greek. Wachter deduces the Gothic word for moon from *mana*, to warn, to admonish, to instruct; and Dr. Jamieson, the Saxon *mona*, from *monian*, the same. May we not then refer also to the Greek verb *μήνω*, to indicate, to point out, to declare—whence, perhaps, *μήνη*, the moon, and *μήν*, a month? If this be admitted, here is the verb to support Tooke's observation, though in other words, viz., a month meaneth the period in which that planet warns, instructs, and points out. *Todd*], a space of time either measured by the sun or moon. It is either—

1. *Lunar*, the time between the change and change, or the time in which the moon returns to the same point, being twenty-eight days.

2. *Solar*, that period in which the sun passes through one of the twelve signs of the zodiac.

3. *Calendar*, by which we reckon time, consisting unequally of thirty or thirty-one days, except February, which consists of twenty-eight, and in leap year twenty-nine days. The calendar month is also called usual, natural, civil, political.

Our months bear the appellations first assigned to them by the Romans. But for what reason we abandoned the Saxon titles of the months, but retained the Saxon names of the days, it is difficult to conjecture. As the former were expressive of the period of the year in which they were respectively placed, and the latter merely the names of the idols worshipped on those particular days, there does not appear to have been much judgment exercised in the rejection of the one or the retention of the other. *Brady's Clav. Calend.*

When the word month occurs in any statute, it must be taken to mean a lunar month, unless calendar months are specified. *Cro. Eliz.* 133. The month, by the common law, is but twenty-eight days. A twelve-month, in the singular number, includes the whole year, according to the calendar; but twelve months, six months, &c., in the plural number, shall be computed after the rate of twenty-eight days to every month, except in cases of presentations to benefices to avoid lapse, &c., which shall be calendar months. The word month may, indeed, mean lunar or calendar, according to the intention of the contracting parties. *1 M. & S.* 111; *1 Saund. Rep.* 251, n. d.

By the universal rule of the commercial world, a month is deemed, in all cases of negotiable instruments, and indeed in all

commercial contracts, to be a calendar month. *Story on Bills*, 379.

Monumenta quæ nos recorda vocamus sunt veritatis et vetustatis vestigia. Co. Lit. 118.—(Monuments, which we call records, are the vestiges of truth and antiquity.)

MOOR, an officer in the Isle of Man, who summonses the courts for the several sheadings. The office is similar to our bailiff of a hundred.

MOOT [*mot*, *gemot*, Sax., meeting together], to plead a mock cause; to state a point of law by way of exercise, as was commonly done in the inns of court at appointed times.

MOOT-CASE or **MOOT-POINT**, a point or case unsettled and disputable, such as properly affords a topic of disputation. A case fit for exercising young students at law.

Such as, from their learning and standing, were called by the members to argue moot-cases, were sometimes called *utter-barristers*; the rest who, for want of experience, &c., were not admitted, were by some called *inner-barristers.* *Chambers.*

MOOT-HALL or **MOOT-HOUSE**, council-chamber, hall of judgment, town-hall.

MOOT-HILLS, hills of meeting, on which our British ancestors held their great courts. Many of these still exist not only in the British dominions but also in the Netherlands. They commonly consist of a central eminence, on which sat the Judge and his assistants; beneath was an elevated platform for the parties, their friends, and "compurgators," who sometimes amounted to 100 or more; and this platform was surrounded with a bench to secure it from the access of the spectators. *Encyc. Lond.*

MOOT-MAN, one of those who used to argue the reader's cases in the inns of court. See **MOOT-CASE.**

MOOTA CANUM, a pack of dogs. *Cowell.*

MOOTER, a disputer of moot points.

MOOTING, the chief exercise formerly performed by students in the inns of court.

MORA, a moor, marsh land, a heath; barren and unprofitable ground.

Mora reprobatur in lege. Jenk. Cent. 51.—(Delay is reproved in law.)

Mors dicitur ultimum supplicium. 3 Inst. 212.—(Death is denominated the extreme penalty.)

Mos retinendus est fidelissimæ vetustatis. 4 Co. 78.—(A custom of the truest antiquity is to be retained.)

Mors omnia solvit. Jenk. Cent. 160.—(Death dissolves all things.)

MORA MUSSA, a watery or boggy moor; a morass. *Mon. Ang. t. i. p.* 306.

MORATUR IN LEGE, he demurs; because the party does not proceed in pleading, but rests or abides upon the judgment of the court in a certain point, as to the legal sufficiency of his opponent's pleading. The court deliberate and determine thereupon. See **DEMURRER.**

MORAVIAN, otherwise called Herrnhutters or united brethren. A sect of Christians

whose social polity is particular and conspicuous. It sprung up in Moravia and Bohemia, on the opening of that Reformation which stripped the chair of St. Peter of so many votaries, and gave birth to so many denominations of Christians. They give evidence on their solemn affirmation. See **QUAKERS**.

MORE OR LESS (*sive plus sive minus*), these words in a contract, which rests *in fieri*, will only excuse a very small deficiency in the quantity of an estate; for, if there be a considerable deficiency, the purchaser will be entitled to an abatement. *Hill v. Buckley*, 17 Ves. 394; and see *Cross v. Eglin*, 2 B. & Ad. 106.

MORGANGINA or **MORGANGIVA** [*morgen*, Sax., the morning, and *gifan*, gift], a gift on the wedding day; dowry; the husband's gift to his wife on his wedding day.

MOROSUS, marshy. See **MORA**.

MORSELLUM or **MORSELLUS TERRÆ**, a small parcel or bit of land. *Mon. Ang.* 282.

MORT D'ANCESTER. See **ASSISE OF MORT D'ANCESTOR**.

MORTALITY. See **BILLS OF MORTALITY**.

MORTGAGE [*mort*, dead, and *gage*, pledge], a dead pledge; a thing put into the hands of a creditor.

It is, however, in acceptance of law, an obligation or debt by specialty, whereby lands or tenements of a debtor are pawned or bound over to the other for money or other effects borrowed; peremptorily to be the creditor's for ever, if the money be not repaid at the day agreed upon. In this sense, *mortgage*, in the common law, amounts to much the same with *hypotheca* in the civil law. The creditor, holding such land on such agreement, is called the *mortgagee*, and he who pawns or gages, the *mortgagor*. Should the money be not repaid at the time limited, the land pledged is, by law, dead and gone from the mortgagor, and the mortgagee's estate in the lands is no longer conditional, but absolute. The mortgagor then, so far as the common law is concerned, was subjected to great hardships and inconveniences, if he did not strictly fulfil the conditions of the mortgage at the very time specified; as he thereby forfeited the inheritance or the term, as the case might be, however great might be its intrinsic value compared with the debt for which it was mortgaged; but equity perceived the necessity of interposing to prevent such manifest mischief and injustice, and treated a mortgage as a mere security for the debt due to the mortgagee, that a mortgagee held the estate, although forfeited at law, as a trust, and that a mortgagor had an equity of redemption which he might enforce against the mortgagee, as he could any other trust, if he applied within twenty years to redeem, and offered a full payment of the debt and of all equitable charges. So inseparable, indeed, is the equity of redemption from a mortgagee, that it cannot be disannexed

even by an express agreement of the parties.

Every species of property, real or personal, corporeal or incorporeal, tangible or non-tangible, moveable or immoveable, in possession, expectancy, or in action, may be the subject of mortgage. Manor lands and tenements, freehold, copyhold, and leasehold, remainders or reversions, rents, franchises, advowsons, rectories impropriate, tithes, church livings, bills of lading, ships, freightage, articles of merchandize, bills of exchange, promissory notes, debts, government annuities, title-deeds, and possibilities, may, according to their several natures, be conveyed, transferred, delivered, or assigned, by way of mortgage security.

The following are the individual securities classed under the term "mortgage:"

(A) Freeholds.

1. The original mode of mortgaging by a conveyance conditioned to be void or voidable at law, on payment of the sum of money borrowed, together with all interest, costs, and expenses. But we have seen that equity steps in and relaxes the iron rule of the common law, by insisting on the moral obligation of the lender's reconveying the property forfeited at law, on the borrower's satisfying the debt, &c. *Litt.* § 332.

2. A conveyance absolute at law from the beginning, but defeasible in equity by a direction to reconvey, on payment, either with or without a power of sale. But this mortgage differs from the former in form rather than in substance, inasmuch as, though there is a direction to reconvey, it is confined in terms to payment at the appointed time; but equity does not consider time as of the essence of the contract, and therefore implies an engagement to reconvey, after the day set forth in the mortgage deed, on satisfaction of the debt. The mortgagee may foreclose, in both cases; for he is only a *quasi* trustee.

3. A conveyance, either to the lender or his nominee, upon trust to sell after default in payment. Here, if the lender take the conveyance to himself, he is expressly a trustee for raising his debt by a mode defined and limited, *i. e.*, by sale; he cannot foreclose, nor can he, it is conceived (there being an *express* trust, 3 & 4 Wm. IV., c. 27, § 25), acquire the ownership by continuing in possession or receipt of the rents without acknowledgment. For he is neither a mortgagee nor a dry trustee (as his nominee would be, as such nominee would stand between the lender and borrower), for he has a trust coupled with an interest, and is accountable. The right of foreclosure and a power of sale, generally co-exist in modern mortgages.

4. Mortgage for years, otherwise called a mortgage by demise. This was formerly done by way of demise and redemise: *e. g.*, A. having borrowed money of B., demised generally the land to B., for a term of 500 years absolutely, at a peppercorn rent, with

the covenants against incumbrances, and for further assurance; and then B., the day afterward, redemised to A. for 499 years, at a pecuniary rent, which covered the interest of the money lent; and there was a condition in the original demise, that, on payment of the mortgage debt and interest by a given day, the term should be at an end, upon which the derivative term would also cease. But this mode is nearly, if not altogether, obsolete; for the present method is by the demise of the land for a term, under a condition, to be void on the payment of the money and interest; and a covenant is usually inserted in the deed, that till default shall be made in the payment of the money borrowed, the mortgagor shall receive the rents and profits without account. The mortgagor also covenants for himself and his heirs, that if default be made in the payment of the money at the day, that he and his heirs will, at the costs of the mortgagee and his heirs, convey the freehold and inheritance of the mortgaged lands to the mortgagee and his heirs, or to such person or persons (to prevent the term merging) as he or they shall direct or appoint. Such term, however, on the death of the mortgagee, becomes vested in his personal representatives, who, in all cases, are entitled in equity to receive the money lent, of what nature soever the mortgage may happen to be.

(B) Copyhold.

This is usually effected by a conditional surrender in the manor court, by the mortgagor to the mortgagee and his heirs. The condition makes the surrender void on repayment of the money, &c., on a given day; the condition is entered on the rolls, and immediately follows the surrender. If the condition is contained in a separate deed of defeasance (which, by the bye, is never advisable), it should be entered on the rolls. If the money be repaid according to the exigency of the condition, the surrender is at an end, and the surrenderor is in possession *in statu quo*, without readmission or fine. Besides the condition and surrender entered on the rolls, there is frequently a previous covenant to surrender, containing both covenants for the title, and for payment of the money. As well in the case of a conditional as an absolute surrender, the surrenderor remains tenant to the lord until the admission of the surrenderee; but should the surrenderee be admitted, the condition being broken by the nonpayment of the money, &c., his estate is absolute; if afterwards the mortgage be paid off, a readmission and fine will be necessary, and the mortgagor will thereupon gain a new estate, and the descent be altered. So long as the transaction between the mortgagor and mortgagee rests in covenant, if the mortgagee assign his equitable interest by deed, and the mortgagor surrender to the assignee, he may compel the lord, by *mandamus*, to admit him without a double fine. A mort-

gagee cannot be compelled to be admitted, even after condition broken, unless by the special custom of the manor; and where he has not been admitted, and the mortgage is paid off, the mortgagee gives a warrant to the steward to vacate the surrender, and thereupon the surrender is at an end. Consult *Watk. on Copyholds*; *Scriv. on Cop.*

(C) Leaseholds.

When leaseholds are made a mortgage security, it is usual, in order to avoid liability of the rent and covenants in the original lease, to make an under-lease at a peppercorn rent, reserving the last day, or a few days of the original term, and the mortgagor covenants to pay the rent and perform the covenants in the original lease. This precaution of an under-lease should never be neglected, if the rents be heavy and the covenants burthensome, for otherwise, if the mortgagee enter into possession, he will become liable to all the covenants which run with the land; and even if he do not take possession, the better opinion is, that he will become equally liable.

(D) Ecclesiastical property.

1. A mortgage of an *advowson* should be made in fee, and include a power of sale. The mortgagor has a right to nominate, on the living becoming vacant, and may compel the mortgagee to present his nominee, although there be an express agreement between them to the contrary.

2. A charge upon a *benefice* should always be attended by a warrant of attorney to confess judgment and sequester the living, and it is usual to make the charge by demise for a term of years, if the incumbent shall so long live, with a covenant that he will not resign, or do any act to vacate the living, without the consent of the incumbrancer, and that if he be promoted, he will forthwith, at his own costs, execute a deed, charging his new benefice with the incumbrance.

3. Rectories impropriate, and tithes in lay hands, are subject to the like modes of mortgage as any other species of real estate.

(E) Chattels personal.

Personal property is mortgaged by assignment or bill of sale; and if the thing itself be tangible and capable of delivery, then, to be perfectly secure, possession should be taken, and the former owner must not be suffered to have even a concurrent possession, unless authorized by the terms of assignment, but which is very hazardous. The possession of goods and chattels, after sale or mortgage, by the person pledging, is *prima facie* a mark or badge of fraud. It is, however, but presumptive evidence, and may be rebutted by written or parol evidence on the part of the vendee or mortgagee showing that the possession was consistent with the nature of the transaction.

The following are grounds of rebuttal:—

(1) If actual delivery be from circumstances impossible, as in the case of an assignment of a ship or goods at sea, duly

registered under 4 Geo. IV., c. 41, or goods *in transitu*; also, in the case of choses in action, the assignment of the debt, or delivery of the bond, &c., will be sufficient.

(2) Where actual delivery has been made as nearly as may be, as the key of a warehouse.

(3) When the delivery is refused despite of the agreement.

(4) Where the possession is consistent with the deed of assignment, as in the case of an assignment to a creditor without his privity, or an assignment to secure a future contingent debt, or under apprehension of legal process.

(5) If the assignment be conditional, the continuance of possession of the person assigning does not avoid it, because, by the terms of the deed, he is to have possession until the condition be performed.

In the case of debts, choses in action, *post obit* bonds, and policies of insurance, all securities relating to them must be delivered up, and notice should be given to the debtor or insurance office, and all persons having any legal or equitable interest in the property assigned. This notice is essentially necessary for two reasons; first, it protects against the bankrupt laws; and, second, it prevents the party assigning from fraudulently receiving the debt, &c., or again transferring the interest to another person, who, by adopting the precautions which the first party ought to have observed, would acquire the better title or the better equity. 3 *Russ. R.* 1.

Public stock may become the subject of loan, or it may be itself the security for the repayment of money.

Bills of lading may also become the subjects of pledge: and by endorsement thereon by the consignee, the legal right of ownership may be transferred to an assignee, so as to divest or preclude the right of the consignor to arrest the goods *in transitu*.

(F) Equitable mortgages.

If the title deeds of an estate are, without even verbal communication, deposited by a debtor in the hands of a creditor, or of some third person on his behalf, such deposit is of itself evidence of an agreement executed for a mortgage of the estate, of which agreement the creditor may avail himself, as of an agreement in writing for that purpose, for he may file a bill in equity for the completion of the security by a legal conveyance from his debtor, who will not be allowed to plead the Statute of Frauds; or if the debtor become bankrupt, the creditor may petition for the payment of his debt by sale of the estate, and to be allowed to prove the deficiency (if any) under the fiat.

The following are some of the leading points which have been established by the decided cases.

(1) The deposit must be made with the view and intent of an immediate security, and not *diverso intuitu*.

(2) The deposit will create an equitable

mortgage for the debt then due, although there be nothing said at the time.

(3) The deposit may be a security as well for debts actually due as also for future advances, if made out by evidence or oath uncontradicted.

(4) The deposit may be made either to the creditor himself, or to some third person over whom the depositor has no control.

(5) Although there be an unstamped agreement between the parties, which is inadmissible as evidence, yet other parol evidence may be adduced to establish the equitable mortgage.

(6) An equitable mortgage by deposit of title deeds shall have preference over a subsequent purchaser or mortgagee of the legal estate with notice, which will be implied from the nature of the transaction.

(7) If a *bona fide* deposit be made, and the debtor afterwards, and in immediate contemplation of bankruptcy, execute a conveyance of the legal estate to the creditor in completion of the mortgage, it is a good legal title, and will be protected by the equitable title previously obtained.

(8) When the deposit is made for a particular purpose, that purpose may be enlarged by a subsequent agreement, without an actual redelivery; as when deeds are deposited to secure advances by a banking firm, the deposit may be extended to secure advances made by the bank after a change of partners.

(9) It seems that, in order to constitute an equitable mortgage by deposit, there should be a delivery of all the title-deeds.

(10) An equitable lien on copyholds will be created by a deposit of a copy of court roll.

(11) It seems that if there be a written instrument stating the terms on which a deposit is made, an inference contrary to it, founded on affidavit alone, will not be admitted.

(12) If there be written evidence allowing the deposit of the title deeds, the mortgagee will be entitled to the costs of his petition for a sale, but otherwise not.

(G) Welsh Mortgages.

There was a peculiar sort of pledge or mortgage in the Roman law, called *antichresis*, whereby the creditor was entitled to take the profits of the pledge (as, for instance, of lands or animals) as a compensation for, and in lieu of, interest. This mode of contract was not held illegal in the Roman law, unless it was made a cover for some illegal act or for some oppressive usury. But, in the modern continental nations, it seems, from its tendency to give the creditor an oppressive power and to cover usury, to be generally discountenanced; for, in all such cases, the party is bound to account for the profits, deducting his expences, and then is simply allowed his interest. This is the rule adopted in England. Welsh mortgages bear, in many respects, a close resemblance to the contract of *antichresis*, as the mort-

gagge is entitled to receive the profits in lieu of interest. But this kind of mortgage, though formerly much in use, is now in a great measure obsolete. It does not seem ever to have been applied to mere personalty. *Story on Bailments*, 343.

As to the relationship subsisting between mortgagor and mortgagee, it is held at law that a mortgagor in possession of the mortgaged premises is tenant to the mortgagee, who may, however, eject him without notice, after the breach of the covenant for the repayment of the money. If a mortgagee in possession hold over after he is satisfied, there is no tenancy either at law or in equity, but he is a mere trustee, and, therefore, bound to account. If a lease be granted by a mortgagor *prior* to the mortgage, the mortgagee has the same rights against the lessee and those claiming under him, that the mortgagor had, and no other than he had: and his remedy must be on the lease as assignee of the reversion, so long as the lease is in existence, and the tenant acknowledges his title. If, however, the lease be *subsequent* to the mortgage, then the mortgagee may treat the lessee, and all those who may be in possession as wrongdoers, and may bring ejectment: but he cannot distrain or bring any action for the rent they have contracted to pay, as there is no relation of landlord and tenant between them, unless they choose to pay the rent to the mortgagee and he accepts it: then a relation of landlord and tenant is created between them, and the mortgagee will have the ordinary remedy. A mortgagee may at the same time proceed by action at law on his bond or covenant, and by bill in equity for a foreclosure, thus forming an exception to the maxim *nemo debet bis vexari pro eadem causa*. Since a mortgage is a debt by specialty, it follows, from the known rules both of law and equity, that as between the real and personal representatives of the debtor, the personal estate is primarily liable to the payment of the debt, and must indemnify the real estate against it. All instances to the contrary are mere exceptions to this general rule; and whether the mortgaged lands devolve on the heir at law, as *heres natus*, or on a general devisee, as *heres factus*, or on a particular devisee, in either case the personal estate must, in the absence of evidence of intention to the contrary, become the primary fund and exonerate the real estate, descending or devised, from the debt. Consult *Powell* or *Coote on Mortgages*.

MORTGAGEE, he that takes or receives a mortgage.

MORTGAGOR or **MORTGAGER**, he that gives a mortgage.

MORTH [Sax.], open murder, answering exactly to the French *assassinat* or *muerte de guet-apens*.

MORTHLAGA, a murderer.

MORTHLAGE, murder.

MORTIS CAUSA, **DONATIO**. See **DONATIO MORTIS CAUSA**.

MORTMAIN [*mort*, Fr., dead, and *main*,

hand], such a state of possession as makes it unalienable; whence it is said to be in a *dead hand*—in a hand that cannot shift away the property. Lands in mortmain are a dead weight upon commerce.

By several old statutes, alienation of lands and tenements in mortmain, *i. e.*, to religious and other corporations, which were supposed to hold them in a dead or unserviceable hand, were prohibited under pain of forfeiture to the lord, the fruits of whose feudal seignory (the great hinge of government in those days) were thus impaired. But by the concurrent consent of the immediate and all other subordinate lords, with that of the lord paramount, *i. e.*, the king, this forfeiture might be dispensed with. And the 7 & 8 Wm. III., c. 37, made a license from the Crown a sufficient dispensation in all such cases. See **CHARITABLE USES**.

By 3 & 4 Vict., c. 60, for further amending the Church Building Acts, which are therein recited, it is enacted that any endowment, grant, or conveyance under the said acts or that act, for a site for any church or chapel, or churchyard, or parsonage house, or glebe, or for the use or benefit of any church or chapel, or of the incumbent or minister thereof, or for the repairs thereof, whether made before or after the passing of that act, shall be valid without any license or writ of *ad quod damnum*, the Statute of Mortmain, or any other statute or law to the contrary notwithstanding: provided that such exemption from the mortmain acts shall not extend to any case where the endowment shall in the whole exceed the clear annual value of 300*l*.

By 6 & 7 Vict., c. 37, § 12, the minister or perpetual curate of a district or parish, formed under that act, is empowered, notwithstanding the Statute of Mortmain, to take to him and his successors grants or endowments, or augmentations, or real or personal estate, as therein mentioned.

MORTPAY, dead pay; payment not made.

MORTUARY, a burial place; a gift left by a man at his death to his parish church, for the recompense of his personal tithes and offerings not duly paid in his lifetime. Also, a kind of ecclesiastical heriot, being a customary gift claimed by and due to the minister in very many parishes, on the death of his parishioners. Like lay heriots, they were originally but voluntary bequests to the church. It was usual in ancient times to bring the mortuary to church along with the corpse when it was brought to be buried, and thence it is sometimes called a *corpse-present*. In the laws of Canute, it was called *soul-scot*, or *saule-socat*, which signifies *pecunia sepulchralis*, or *symbolum animæ*. The lord must have the best good left him as a heriot; and the church the second best as a mortuary.

The variety of customs with regard to mortuaries, giving frequently a handle to exactions on the one side, and frauds or

expensive litigations on the other, it was thought proper, by statute 21 Hen. VIII., c. 6, to reduce them to some kind of certainty. For this purpose it is enacted that all mortuaries or corse-presents to parsons of any parish shall be taken in the following manner, unless where by custom, less or none at all is due, viz.—for every person who does not leave goods to the value of ten marks, nothing; for every person who leaves goods to the value of ten marks and under 30*l.*, 3*s.* 4*d.*; if above 30*l.* and under 40*l.*, 6*s.* 8*d.*; if above 40*l.*, of what value soever, they may be 10*s.*, and no more. And no mortuary shall, throughout the kingdom, be paid for the death of any *feme covert*, or child, or any one of full age, that is not a housekeeper, nor for any wayfaring man, whose mortuary shall be paid in the parish to which he belongs. 2 *Bl. Com.* 427.

It has been sometimes used in a civil as well as in an ecclesiastical sense, being payable to the lord. *Paroch. Antiq.* 470.

MORTUUM VADIUM, a dead pledge or mortgage: which see.

MOTE, a meeting, an assembly, used in composition as *burgmote*, *fulkmote*, &c. See **GMOT**.

MOTE-BELL, the bell which was used by the Saxons to summon people to the court.

MOTEER, a customary service or payment at the mote or court of the lord, from which some were exempted by charter or privilege.

MOTHER-CHURCH [*primaria ecclesia*], the parish church.

MOTHERING, a custom of visiting parents on Midlent Sunday.

MOTIBILIS, one that may be moved or displaced; also, a vagrant. *Fleta*, l. vi. c. 6.

MOTION, an occasional application to a court of law or equity, by the parties or their counsel, in order to obtain some rule or order, which becomes necessary either in the progress of a cause, or summarily and wholly unconnected with plenary proceedings.

In Chancery, motions are of two kinds.

1. *Special*, which may be made *ex parte*, 1st, from the pressing nature of the case; 2dly, when a party is not entitled to be served; and, 3dly, when there is no party on whom service can be made. But generally special motions require a notice to be served on the opposite parties two clear days at least before the hearing. An affidavit of the service of notice should be made and filed at the Affidavit Office, and an office copy obtained, to be ready in court in case the opposite party neglects to appear upon the motion. The first and last days in term, and every Thursday in term, besides the seal days in vacation, are set apart for motions. Special motions are generally supported by affidavit. The general rule as to costs is (1), that a party making a successful motion is entitled to costs as costs in the cause, the other party not being entitled to costs; (2), that a party making a motion, which

fails, is not entitled to costs, but the party opposing it is entitled to costs as costs in the cause; (3), that when a motion is made and not opposed, both parties are entitled to costs as costs in the cause.

2. *Of course*. These motions, assuming the proceedings to be regular, are granted without any consideration of merits or circumstances. Some only require counsel's signature, whilst others must be mentioned in open court. They may be made on any day during term, or on seal-days in vacation. See *Orders*, 8th May, 1845, 16, clauses 47 & 48.

In Parliament or public assemblies, the proposing of any matter for the consideration of the meeting.

MOVABLES [some write this word *moveable*, but there is no necessity for retaining the *e* any more than in *immovable*, where Dr. Johnson himself omits it], goods, furniture, personalty.

MOULT, a mow of corn or hay.

MULCT, a fine of money or a penalty.

MULIER (1), a woman in general; (2) a virgin; (3), a wife. 1 *Inst.* 243.

MULIER PUISNE, when a man has a bastard son, and afterwards marries the mother, and by her has also a legitimate son, the elder son is *bastard eigné*, and the younger son is *mulier puisné*.

Mulieres ad probationem status hominis admitti non debent. Co. Lit. 6.—(Women ought not to be admitted to proof of the estate of a man.)

MULIERTY, lawful issue, because begotten *e muliere* of a wife, and not *ex concubina*.

MULLONES FÆNI, cocks or ricks of hay.

MULMUTIN LAWS. See **MOLMUTIAN LAWS**.

MULNEDA, a place to build a water-mill. *Mon.* ii. 284.

MULTA or **MULTURA EPISCOPI**, a fine or final satisfaction, anciently given to the king by the bishops, that they might have power to make their wills; and that they might have the probate of other men's wills, and the granting of administrations. 2 *Inst.* 291.

Multa conceduntur per obliquum, quæ non conceduntur de directo. 6 Co. 47.—(Many things are obliquely conceded which are not conceded directly.)

Multa ignoramus quæ nobis non laterent si veterum lectio nobis fuit familiaris. 10 Co. 73.—(We are ignorant of many things which would not be hidden from us if the readings of old authors were familiar to us.)

Multa in jure communi contra rationem disputandi, pro communi utilitate introducta sunt. Co. Lit. 70.—(Many things contrary to the rule of argument are introduced into the common law for common utility.)

Multa multo exercitatione facilius quam regulis percipies. 4 *Inst.* 50.—(You will perceive many things more easily by practice than by rules.)

Multa non velut lex, quæ tamen tacite damnavit. —(The law forbids not many things which yet it has silently condemned.)

Multi transeunt cum universitate quæ non per se transeunt. Co. Lit. 12.—(Many things pass in the whole, which would not pass by itself.)

MULTIPARTITE [*multus*, Lat., many, and *pars*, a part], divided into several parts.

MULTIPLE POINDING, a double distress, in Scotch law, which gives name to an action that may be brought by a person possessed of money or effects liable to claims from different claimants. Thus, where the rents of an estate are claimed by different persons, the tenant may raise an action of multiple poinding, calling the different parties to dispute their preferences, and to have it proved that the tenant is liable once, and in a single payment only. *Scotch Term.*

MULTIFARIOUS, having different respects or great diversity in itself.

Multifariousness in a bill in equity, is improperly joining in one bill distinct and independent matters, and thereby confounding them; as, for example, the uniting in one bill of several matters perfectly distinct and unconnected, against one defendant, or the demand of several matters of a distinct and independent nature against several defendants in the same bill. In strictness of language, it would be more correct to call it a misjoinder where different and distinct claims are mixed in the same bill against the same defendant. Multifariousness as to one defendant, constitutes no necessary ground of objection by the other defendants; for a bill may be multifarious as to one defendant, and not as to the rest. What is more familiarly understood by the term multifariousness, as applied to a bill, is where a party is able to say he is brought as a defendant upon a record, with a large portion of which, and of the case made by which, he has no connection whatever. But to lay down any rule, applicable universally, or to say what constitutes multifariousness as an abstract proposition, is, upon the authorities, utterly impossible.

Although a bill is ordinarily open to objection for multifariousness which contains two distinct subjects, wholly disconnected with each other; yet, if one of them be clearly without the jurisdiction of a court of equity for redress, it seems that the court will treat the bill as if it were single, and proceed with the other matter, over which it has jurisdiction, as if it constituted the whole and sole object of the bill. And a bill is not to be treated as multifarious because it joins two good causes of complaint, growing out of the same transaction, where all the defendants are interested in the same claim of right, and where the relief asked for, in relation to each, is of the same general character.

The objection to multifariousness is usually taken by demurrer, and if not so taken, and the cause goes on to hearing, the objection will not then always be fatal to the suit. But should the bill be artfully framed, so that from that, or from some other cause, the objection does not appear on the face of

the bill, the defendant may take advantage thereof by setting forth the special matter by a plea. *Story's Eq. Plead.* 224.

At common law, it has been laid down in numerous modern cases, that, whether the form *de injuriâ* be employed or not, the replication cannot be objected to as multifarious, if the facts stated in the plea, though they are several, constitute one ground of defence; for that the rule of pleading is not that the issue must be joined on a single fact, but on a single point of defence. But it is a matter of no little difficulty to ascertain whether several facts, which go towards the constituting of a defence are so connected as to form one complete point of defence, so as to admit of the application of this rule. See the cases collected in *2 Saund. Rep.* 295 c.

Multi multa, nemo omnia novit. 4 Inst. 348.—(Many men know many things; no one knows every thing.)

Multiplex et indistinctum parit confusionem et quæstiones quo simpliciores, eo lucidiores. Hob. 335.—(Multiplicity and indistinctness produce confusion; and questions, the more simple they are, the more lucid.)

Multiplicatâ transgressionem crescat pænæ infliccio. 2 Inst. 479.—(Let infliction of punishment increase with multiplied crime.)

MULTIPLICITY, more than one of the same kind.

A bill in equity may be objectionable for an undue divisibility or splitting up of a single cause of suit, and thus multiplying subjects of litigation. Equity discourages unreasonable litigation; it will not, therefore, permit a bill to be brought for a part of a matter only, where the whole is the proper subject of one suit. Upon a somewhat analogous ground, if an ancestor have made two mortgages, the heir will not be allowed to redeem one without the other; for in such a case, the equity of the heir, like that of the ancestor, is to redeem the whole or none. The objection may be taken by way of plea; for it is against the whole policy of courts of equity to encourage multiplicity of suits. *Story's Eq. Plead.* 234.

It is a rule of pleading, at common law, that where a subject comprehends multiplicity of matter, there, in order to avoid prolixity, the law allows of general pleading. *2 Saund. Rep.* 410.

MULTITUDE, an assembly of ten or more persons.

Multitudinem decem faciunt. Co. Lit. 247.—(Ten make a multitude.)

Multitudo errantium non parit errori patrocinium. 11 Co. 75.—(The multitude of those who err gives no excuse to error.)

Multitudo imperitorum perdit curiam. 2 Inst. 219.—(A multitude of ignorant persons destroys a court.)

MULTO, a wether sheep. *Old Records.*

MULTO FORTIORI. See **A FORTIORI.**

Multo utilius est pauca idonea effundere, quam multis inutilibus homines gravari. 4 Co. 20.—(It is more useful to pour forth a few

useful things than to oppress men with many useless things.)

MULTURE [*moulture*, Fr., from *molo*, Lat., to grind], a grist or grinding; the corn ground; also the toll or fee due for grinding.

In Scotch law, a certain stipulated quantity of meal given as payment to the proprietor or tackman of a mill for grinding the corn. *Encyc. Lond.*

MUND, peace, whence *mundbryc*, a breach of the peace.

MUNDBYRD, a receiving into favour and protection.

MUNICIPAL [*municipalis*, Lat., of *munus*, office, and *capio*, I take, or hold], belonging to a corporation.

MUNICIPAL CORPORATION ACT, 5 & 6 Wm. IV., c. 76, by which the corporate towns or boroughs enumerated in the schedules A and B annexed thereto (comprising, with the exception of London, and a few other places, the whole of those in England and Wales), are placed under one uniform plan of constitution thereby newly devised.

The definition of a burgess in the boroughs comprised in the act (that is, a burgess entitled to such new rights as the act for the first time confers upon these boroughs), is a male person of full age, not an alien, nor having received, within the last twelve months, parochial relief, or alms or pension, or charitable allowance from the charitable trustees of the borough, who, on the last day of August in any year, shall have occupied any house, warehouse, counting-house, or shop, within the borough during that year, and the whole of the two preceding years; and during such occupation shall also have been an inhabitant householder within the borough, or within seven miles thereof, and shall, during such time, have been rated in respect of such premises to all rates for relief of the poor, and have paid all such rates, and all borough rates, in respect of the same premises, except those payable for the last six calendar months; and shall be duly enrolled in that year as a burgess on the burgess-roll. But when the premises came to the party by descent, marriage, marriage settlement, devise, or promotion to any benefice or office, he shall be entitled to reckon in the occupancy and rating of the former party from whom they were so derived.

It is further provided, that in every borough there shall be elected, annually, a mayor, and periodically, a certain number of aldermen, and of councillors, who, together, shall constitute the council of the borough; that they shall be respectively chosen from among persons on, or entitled to be on, the burgess list, and otherwise qualified as in the act described; that the councillors shall be elected by the burgesses, and the mayor and aldermen by the council; that the council shall meet once a quarter (and oftener, if due notice be given) for trans-

action of the general business of the borough, and make their decisions according to the majority of the members present (if those present amount to one-third of the whole), and that the mayor or other member presiding in his absence, shall have a casting vote; that at any meeting at which two-thirds at least of the whole shall attend, the council may make bye-laws for the good rule and government of the borough, for the prevention and suppression of nuisances, and for the imposition of fines on persons in that behalf offending; that the burgesses shall annually elect from among those qualified to be councillors, two auditors and two assessors; the former to audit the accounts of the borough, the latter to assist in revising the burgess list; and that the council also may appoint a town clerk and a treasurer (neither of whom is to be a member of the council), and such other officers as have been usual, or shall be necessary, and shall be empowered to fix their salaries; and if the borough have a separate court of quarter sessions, shall also appoint a coroner and a clerk of the peace.

The council of any borough which is desirous that a separate court of quarter sessions should be holden there, may petition the Crown for that purpose, and if the application be granted, the Crown shall appoint a recorder, who shall be sole Judge of such court of quarter sessions, as also of the court of record for civil actions, if there be any, and if it be not regulated by any local act of Parliament, and no barrister of five years' standing sat therein when the act passed.

To certain boroughs, and to such others as may petition for it, the Crown may also grant a commission of the peace, and nominate such persons to be justices as the Crown shall think proper; and the mayor and recorder are respectively justices of the peace, *ex officio*.

It is provided, subject however to certain exceptions, that the council shall not sell or mortgage the land or public stock of the borough, or demise them for more than a certain term; and that the rents, profits, and interest of all corporate property shall be paid to the treasurer, and carried to the account of the borough fund, which, after discharging debts, shall be applied to the payment of salaries, the expenses connected with the corporate elections, prosecutions, gaols, and maintenance of offenders, and other public purposes; that the surplus (if any) shall be expended for the public benefit of the inhabitants, and the deficiency (if any) made up by a rate; and that the accounts shall be at all times open to inspection and regularly audited and printed for the use of the rate-payers, and submitted to the Secretary of State, and laid before both Houses of Parliament.

This act distinguishes between the rights newly conferred by it, and the former rights of the corporators, with regard to the corporate property, and as to voting at parlia-

mentary elections; both which former rights are expressly reserved; it being provided that every inhabitant, and every person admitted a freeman or burgess, and the wife, or widow, or son, or daughter of any freeman or burgess, and every apprentice, shall enjoy the same share and benefit of the lands and public stock of the borough, as he might have enjoyed in case the act had not been passed; subject to the limitation however, that the total amount to be divided among such persons shall not exceed the surplus which shall remain after payment of the expenses, by the act charged upon the borough fund. And that every person who, if the act had not been passed, would have enjoyed as a burgess or freeman, or might thereafter have acquired in respect of birth or servitude, the right of voting in the election of members of Parliament, shall be entitled to enjoy or acquire such right of voting as fully as he might in that case have done. And the town clerk of every borough is to make out a list (to be called the freeman's list) of all persons admitted burgesses or freemen, for the purpose of such reserved rights as aforesaid, as distinguished from the burgesses newly created by the act, and entitled to the rights which it newly confers.

No person shall in future be a burgess or freeman by gift or purchase; the effect of which is to leave no other title in force, as regards the right to be placed on the freeman's roll, but those of birth, marriage, and servitude as an apprentice. It abolishes (though with a reservation of the rights of the then existing claimants) the exemptions that had been ordinarily claimed by burgesses, inhabitants, or the like, for such tolls or dues as are levied to the use of the body corporate.

In divers boroughs a custom had prevailed, and bye-laws had been made, that no person not being free of the borough or of certain guilds, mysteries, or trading companies therein, should keep a shop for merchandize, or use certain trades or occupations for gain within the same, the act provides that every person may in future keep any shop, and use every lawful trade and occupation therein, any such custom or bye-laws notwithstanding.

MUNICIPAL LAW, that which pertains solely to the citizens and inhabitants of a state, and is thus distinguished from political law, commercial law, and the law of nations.

It is now, however, more usually applied to the customary laws that obtain in any particular city or province, and which have no authority in the neighbouring places.

MUNIMENT [*munio*, Lat., to fortify], support, defence, record, writing upon which claims and rights are founded and depend; evidences, charters.

MUNIMENT-HOUSE or **MUNIMENT-ROOM**, a house or room of strength, in cathedrals, collegiate churches, castles, colleges, or public buildings, purposely made for keeping the seal, evidences, deeds,

charters, writings, &c., of such church, college, &c.

MURAGE [*murus*, Lat., a wall], money paid to keep walls in repair.

MURATIO, a town or borough surrounded with walls.

MURDER [*morthor*, *morthen*, Sax., *murdrum*, Law Lat., the etymology requires that it should be written, as it anciently often was, *murther*; but of late the word itself has commonly, and its derivatives universally, been written with *d*. *Dr. Johnson*. The etymology of the Saxon *morth*, whence *morthor*, and of the M. Gothic *maurthr*, require *murther*; but *murder* has the authority of the Su. Gothic *mord*, the Teutonic *moord*, and the old French *murdre*. *Todd*], the act of killing a man unlawfully or criminally.

The legal description of murder is when a person of sound memory and discretion unlawfully kills any reasonable creature with malice aforethought, either express or implied.

1. The person committing the offence must be of sound memory and discretion, for infants and insane people are incapable of committing any crime, unless they evince a consciousness of doing wrong, and a discernment between good and evil. See **MENTAL ALIENATION**.

2. It must be an unlawful killing by any means which superinduces death within a year and a day after the cause of death administered.

3. The person killed must be a reasonable creature in being, and under the Queen's peace.

4. The killing must be with malice aforethought.

Every person convicted of murder shall suffer death as a felon. 9 *Geo. IV.*, c. 31, § 3; 6 & 7 *Wm. IV.*, c. 30.

MURDERMENT, murder. *Obsolete*.

MURDRUM, the secret killing of another, also the amercement to which the vill wherein it was committed, or, if that were too poor, the whole hundred was liable.

MURORUM OPERATIO, the service of work and labour done by inhabitants and adjoining tenants in building or repairing the walls of a city or castle; their personal service was commuted into *murage*.

MURTHLACH. See **MORTLAGE**.

MUSSA, a moss or marsh ground; or a place where sedges grow; a place overrun with moss. *Cowell*.

MUSTER-BOOK, a book in which the forces are registered.

MUSTER MASTER, one who superintends the muster to prevent frauds.

MUSTER-ROLL, a register of forces.

MUTA CANUM, a kennel of hounds, one of the mortuaries to which the Crown was entitled at a bishop's or abbot's decease. 2 *Bl. Com.* 426.

MUTUS, silent, not having anything to say.

Standing mute is when a person, being arraigned, either cannot speak or refuses to answer or plead. Regularly a prisoner is

said to stand mute when being arraigned he either (1) make no answer at all, or (2) answer foreign to the purpose or with such matter as is not allowable, and will not answer otherwise, or (3) upon having pleaded not guilty, refused to put himself upon the country. 2 *Hale P. C.*, 316. By 7 & 8 Geo. IV., c. 28, § 1, he shall by the plea of not guilty, without any farther form, be deemed to have put himself upon the country for trial, and the court shall order a jury for the trial of such person accordingly.

By 7 & 8 Geo. IV., c. 28, § 2, it is enacted that if any person, being arraigned upon or charged with any indictment or information for treason, felony, piracy, or misdemeanour, shall stand mute of malice, or will not answer directly to the indictment or information, in every such case it shall be lawful for the court, if it shall so think fit, to order the proper officer to enter a plea of "not guilty" on behalf of such person; and the plea so entered shall have the same force and effect as if such person had actually pleaded the same. When there is reason to doubt whether the prisoner is sane, a jury should be charged to enquire whether he be sane or not; which jury may consist of any twelve persons who may happen to be present, and upon this issue, the question will be whether he has intellect enough to plead, and to comprehend the course of the proceedings. If they find the affirmative, the plea of "not guilty" may be entered, and the trial will proceed; but if the negative, the 39 & 40 Geo. III., c. 94, § 2, provides that insane persons indicted for any offence, and on their arraignment found to be insane by a jury lawfully impanelled for that purpose, so that they cannot be tried upon the indictment, shall be ordered by the court to be kept in strict custody till the royal pleasure be known.

To advise a prisoner to stand mute is a high misprision, a contempt of the court, and punishable by fine and imprisonment.

MUTILATION, deprivation of a limb or any essential part. See *MAYHEM*.

MUTINY ACT, a statute annually passed "to punish mutiny and desertion, and for the better payment of the army and their quarters." This regulates the manner in which they are to be dispersed among the several innkeepers and victuallers through the kingdom, and establishes a law martial for their government. By this, besides other things comprised in the articles of war, enumerated and enforced in this act, it is enacted that if any officer or soldier shall excite or form any mutiny, or, knowing of it, shall not give notice to the commanding officer, or shall desert or list in any other regiment, or sleep upon his post, or leave it before he is relieved, or hold correspondence with a rebel or an enemy, or strike or use violence to his superior officer, or shall disobey his lawful commands, such offender shall suffer such punishment as a court-martial shall inflict, though it extend to death itself.

The first of these acts passed on the 12th April, 1689.

MUTUAL, reciprocal, each acting in return, or correspondence to the other.

MUTUAL DEBTS, money due on both sides between two persons.

MUTUAL PROMISES, concurrent considerations, which will support each other, unless one or the other be void; in which case, there being no consideration on the one side, no contract can arise. But if the promise on one side be only voidable, as in consideration of money given, or of a promise by an infant, it is sufficient.

Mutual promises, however, to be obligatory, must be made simultaneously. If they be made at different times on the same day, they will not be a good consideration for each other, because of the want of reciprocity of obligation at the moment the contract is made. *Story on Contracts*, 81.

MUTUAL TESTAMENT, a will made by two persons who leave their effects reciprocally to the survivor.

MUTUALITY, reciprocation; an acting in return.

MUTUATION, the act of borrowing.

MUTUATUS, having borrowed.

MUTUO, to borrow or lend.

MUTUS ET SURDUS, dumb and deaf.

MUTUUM, a loan whereby the absolute property passes to the borrower, it being for consumption, and he being bound to restore, not the same thing, but other things of the same kind. Thus, if corn, wine, money, or any other thing which is not intended to be returned, but only an equivalent in kind, is lost or destroyed by accident, it is the loss of the borrower; for it is his property, and he must restore the equivalent in kind; the maxim—*ejus est periculum, cujus est dominium*—applying to such cases.

In a *mutuum* the property passes immediately from the *mutuant* or lender to the *mutuary* or borrower, and the identical thing lent cannot be recovered or redemanded. *Jones on Bailm.* 64.

MYNSTER-HAM [*ecclesiæ mansio*], monastic habitation; perhaps the part of a monastery set apart for purposes of hospitality, or as a sanctuary for criminals. *Anc. Inst. Eng.*

MYSTERY, an art, trade, or occupation.

MYTACISM [*μυτακισμός*, Gr.], in rhetoric, the too frequent use of the letter M. *Encyc. Lond.*

N

NAAM [*nam*, Sax., to take], the attaching or taking one's moveable goods. *Termes de Ley.*

NAB [*nappa*, Swed.], to catch unexpectedly; to seize without warning. *Encyc. Lond.*

NAM, distress; seizure. *Anc. Inst. Eng.*

NAMATION, the act of distraining or taking a distress. In Scotland it is particularly used for impounding.

NAME [*namo*, Goth., *nama*, Sax., *nam*,

Dut.], the discriminative appellation of an individual.

Proper names are either *christian-names*, as being given at baptism ; or *surnames*, from the sire or father. 4 Rep. 170.

NAMUM VETITUM, an unjust taking the cattle of another and driving them to an unlawful place, pretending damage done by them.

NARR [abbrev. of *narratio*], a declaration in an action.

NARRATOR, a pleader or reporter.

NATALE, the state and condition of a man.

NATHWYTE. See **LAIRWITE**.

NATION, a people distinguished from another people, generally by their language, origin, or government.

NATIONS, *law of*. See **INTERNATIONAL LAW**.

NATIONAL CHURCH, the Protestant church of England, of which the Sovereign is the head and supreme governor.

NATIONAL DEBT, the money owing by government to the public, which public is taxed to pay the interest of it. See **FUNDS**.

NATIVI CONVENTIONARI, villeins or bondmen by contract or agreement.

NATIVI DE STIPITE, villeins or bondmen by birth or stock.

NATIVITAS [*neifly*], the servitude, bondage, or villeinage of women. *Leg. Wm.* 1.

NATIVO HABENDO, a writ that lay to a sheriff from a lord who claimed inheritance in any villein, when his villein was run away, for the apprehending and restoring him to such lord. It was in the nature of a writ of right to recover inheritance in a villein; upon which the lord pursued his plaint, and declared thereupon, and the villein made his defence, so that the question of freedom was tried and determined. *F. N. B.* 77.

NATIVUS, a servant born. *Spelm.*

Natura appetit perfectum ; ita et lex. Hob. 144.

—(Nature desires perfection ; so also law.)

NATURAL AFFECTION, that love which one has for his kindred. It is held to be a good consideration. See **CONSIDERATION** ; **COVENANT TO STAND SEISED**.

NATURAL ALLEGIANCE, that perpetual attachment which is due from all natural born subjects to their sovereign ; it differs from *local* allegiance, which is temporary only, being due from an alien or stranger born for so long a time as he continues within the sovereign's dominions and protection. *Fost.* 184.

Naturale est quicquidlibet dissolvi eo modo quo ligatur. Jenk. Cent. 66.—(It is natural for a thing to be unbound in the same way in which it was bound.)

NATURAL LIBERTY. See **LIBERTY**.

NATURAL PERSONS, such as we are formed by the Deity, opposed to *artificial* persons, who are formed into corporations, by human laws, for purposes of society and government.

NATURAL RIGHTS, those relating to life and liberty.

NATURAL BORN SUBJECTS, those that are born within the dominions of the Crown of England, i. e., within the allegiance of the sovereign.

NATURALIZATION, the act of investing aliens with the privileges of native subjects, which can only be effected by act of Parliament. It has a retrospective effect, in which it differs from denization by royal letters patent. Thus, if a man be naturalized, his son born before may inherit.

No naturalization bill can be received in either house of Parliament without a clause disabling the party from being a member of the Privy Council or of Parliament, and from having any office of trust, civil or military, and from taking lands, tenements, or hereditaments by grant from the Crown ; nor without a clause disabling the person from obtaining any immunity in trade thereby in any foreign country, unless he shall have resided in Britain for seven years next after the commencement of the session in which he is naturalized. These provisions, however, have been usually dispensed with by special acts of Parliament previous to bills of naturalization of any foreign princes and persons distinguished for their rank or services. 13 Geo. II., c. 3 ; 13 Geo. III., c. 25.

Natura non facit saltum ; ita, nec lex. Co. Lit. 238.—Nature takes no leap ; so neither law.)

Natura non facit vacuum, nec lex supervacuum. Co. Lit. 79.—(Nature makes no vacuum ; law no supervacuum.)

Naturæ vis maxima ; natura bis maxima. 2 Inst. 564.—(The force of nature is greatest ; nature is doubly greatest.)

NATURE, *guardianship by*. See **GUARDIAN**.
NATURE, *law of*, the will of God.

NAVAGIUM, a duty on certain tenants to carry their lord's goods in a ship.

NAVAL FORCES, the royal navy.

NAUFRAGE, shipwreck.

NAVIGATION ACTS. These are mainly contained in the 3 & 4 Wm. IV., cc. 54, 55, 59. These statutes are to be considered the representatives and successors of the celebrated Navigation Act, in the reign of Charles the Second. Of this act Blackstone observes, that it was itself an improvement on an earlier system which was framed in 1650, and with a narrow partial view, being intended to mortify our own sugar islands, which were disaffected to the Parliament, and still held out for Charles the Second by stopping the gainful trade which they then carried on with the Dutch ; and at the same time to clip the wings of those over opulent and aspiring neighbours. This original navigation law prohibited all ships of foreign nations from trading with any English plantation without licence from the council of state. In 1651 the prohibition was extended also to the mother country, and no goods were suffered to be imported into England or any of its dependencies in any other than English bottoms, or in the ships

of that European nation of which the merchandize imported was the genuine growth or manufacture. At the Restoration, the former provisions were continued by 12 Car. II., c. 18, being the Navigation Act before referred to, with this very material improvement, that the master and three-fourths of the mariners shall also be English subjects.

In the reign of Geo. IV., both the statutes last mentioned, and all the former navigation acts were repealed, and a new system introduced which was embodied in the several acts 6 Geo. IV., cc. 109, 110, 114. But this has also in its turn been superseded by the statutes of Will. IV., enumerated above.

The effect of these statutes of Will. IV., as of the acts of navigation which preceded them, is generally to secure to British shipping and to British commerce, as distinguished from those of foreign countries, a certain amount of exclusive privilege, and that both as regards the mother country and her colonies.

In order to understand their provisions it will be proper first to consider what constitutes, according to those acts, the character of a British ship.

It is required then by 3 & 4 Will. IV., c. 54, that in order to claim this character, a ship should in general be duly registered and navigated as such.

And of these requisites in their order.—

1st, As to registration—the provisions are too minute and numerous to be fully stated. It will be sufficient to mention such as appear to be of principal importance. By 3 & 4 Wm. IV., c. 55, it is provided that the ship must not only be registered, but such certificate of registry must also be obtained as in the act described: that for these purposes she must be wholly of the build of the United Kingdom, or the Isle of Man, Guernsey, or Jersey, or some of the colonies or territories in Asia, Africa, or America, Malta, Gibraltar, or Heligoland, which belong to the Crown of this realm at the time of the building, or must be a ship condemned as prize of war, or under the laws relating to the slave trade; and belonging to subjects of the Crown duly entitled to be owners of registered vessels; that the owner or owners must be a subject or subjects of Great Britain; and that a declaration to that effect must be made by the owner, or a certain proportion of the owners, as the case may be, before the ship is registered; that every ship shall be deemed to belong to some port at or near which some or one of the owners who subscribes such declaration shall reside; that no registry shall in general be made in any other port or place than that to which the ship so belongs; and that whenever the original owner or owners shall have transferred all his or their shares, or in case she is so altered as not to correspond with the particulars stated in the certificate of registry, the ship shall be

registered *de novo*; that the registration shall be made, and the certificate thereof granted by the person who, according to the part of the world in which the ship is to be registered, is authorized by the statute to act in that behalf; that the certificate of registry shall set forth from the information of the subscribing owner or owners, the names, occupation, and residence of such owners, the proportion in which they are severally interested, such proportion being required by the act to be always some integral sixty-fourth part of the whole; the name of the ship, of the port to which she belongs, and of her master, her tonnage, and when and where she was built; and shall also set forth from a certificate to be furnished by a surveying officer, her build, rigging, and dimensions.

It is also provided that no greater number than thirty-two persons shall be entitled to be legal owners at one and the same time of any ship, as tenants in common, or to be registered as such; that as often as the property of any ship or any part thereof belonging to any British subjects shall, after registry, be sold to any other subject or subjects, the same shall be transferred by bill of sale, or other instrument in writing, containing a recital of the certificate of registry, and that otherwise such transfer shall not be valid in law or equity, and that no such instrument shall be valid to pass the property in the ship, or any share thereof, or for any other purpose, until it shall have been produced to the proper officers for registration, nor until they shall have entered the name, residence, and description of the vendor or mortgagee (or of each if more than one) the number of shares transferred, the name, residence, and description of the purchaser or mortgagor (or of each if more than one), and the date of the instrument, and of its production. The officers are also required (unless the ship is about to be registered *de novo*) to indorse these particulars on the certificate of registry, when produced to them for that purpose. But it is provided, that as soon as the particulars aforesaid shall have been so entered by the officers of registry, the instrument shall be deemed valid and effectual to pass the property, and for all other purposes, except as against such subsequent purchasers and mortgagees as shall first procure the indorsement to be made on the certificate in manner in the act provided, its intent being, that where several purchasers or mortgagees appear to claim the same property or security, the priority between them shall depend not on the time when the particulars of the bills of sale are entered, but the time when the indorsement is made on the certificate of registry.

2. As to the requisite that a British ship must be duly navigated, it is enacted by 3 & 4 Will. IV., c. 54, that in general she must be navigated during the whole of every voyage in every part of the world, by a master who

is a British subject, and by a crew whereof three-fourths at least are British seamen. But persons who have served on board any ships of war in time of war for three years are British subjects within the meaning of this act, and one British seaman for every twenty tons of the burthen is declared in all cases a sufficient proportion, though the number of other seamen exceed one-fourth. The Crown also is authorized by proclamation at any time to reduce the proportion of British seamen to be required by law. Such are the requisites for giving a vessel the character of a British ship. Let us now consider the advantages she obtains as such—which may be stated as follows :

By 3 & 4 Wm. IV., c. 54, amended by 3 & 4 Vict., c. 95, it provided,

1st. As to the import trade.

That certain specified goods, being the produce of Europe, shall not be imported into the United Kingdom to be used therein except in British ships, or ships of the country of which the goods are the produce or manufacture, or from which the goods are imported.

That generally, and subject to certain exceptions, no goods of Asia, Africa, or America shall be imported into the United Kingdom to be used therein in foreign ships unless they be those of the country in Asia, Africa, or America, of which the goods are the produce or manufacture, and from which they are imported and subject to certain exceptions, shall not be imported from Europe into the United Kingdom, to be used therein, in any shipping whatever.

That no goods whatever shall be imported into the United Kingdom from Guernsey, Jersey, Alderney, Sark, or Man, except in British ships.

That no goods whatever shall be imported into any British possessions in Asia, Africa, or America in any foreign ships, except ships of the country of which the goods are the produce, and from which they are imported.

2ndly, As to the export trade.

That no goods shall be exported from the United Kingdom to any British possession in Asia, Africa, or America, nor to the islands of Guernsey, Jersey, Alderney, Sark, or Man, except in British ships.

And 3rdly, As to the coasting and inter-colonial trade.

That no goods shall be carried coastwise from one part of the United Kingdom, or one part of any of the aforesaid islands, or of the aforesaid possessions, to another, or from one of the aforesaid islands to another, or from one of the aforesaid possessions to another, except in British ships.

To which statement of the substance of the restrictions intended for the benefit of our shipping, we have only to add, that in case of their violation by carrying on in vessels not duly registered or navigated, such trades as the acts intend to confine to those of British character, both ships and

cargo are, by 3 & 4 Wm. IV., c. 54, and c. 55, liable to forfeiture, and the master to the penalty of 100*l*.

With respect to the intercourse between the colonies and foreign states, which is permitted, as above stated, subject to a certain qualification, it is further regulated by 3 & 4 Wm. IV., c. 59, amended by 5 & 6 Vict., c. 49, that intercourse, as regards all the British possessions abroad, is, by these acts, confined to the ships of foreign countries, which, having colonial possessions of their own, shall grant the like privilege of trading to British ships, or which, not having colonial possessions, shall place the commerce and navigation of this country, and its possessions abroad, upon the footing of the most favoured nation, or which, without satisfying these conditions, shall obtain from the sovereign in council a special grant of such privilege.

As regards the British possessions in America, except in the case of exportation of the produce of the fisheries, the intercourse is also confined to certain parts in these colonies called "free ports," the number of which is capable of being extended by order in council, and certain duties are imposed on imports into the British possessions in America, not being the growth of the United Kingdom, to be applied by the local legislature to such uses as it may direct.

But notwithstanding anything in these acts contained, the intercourse between foreign countries and the British possessions in or near the continent of Europe, or within the Mediterranean, or in Africa, or the limits of the East India Company's charter, except the possessions of the company, may be regulated by the sovereign in council, in such manner as shall from time to time appear expedient and salutary.

The 10th Vict., c. 2, after reciting that it is expedient to allow, for a limited time, corn, maize, grain, meal, flour, rice, and potatoes, to be imported in any ship or vessel from any country whatever, and that such articles warehoused for exportation only should be allowed to be entered for home consumption: enacts by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that from and after the passing of this act, and before the first day of *September* in this present year (1847), it shall and may be lawful for any person or persons to import into the United Kingdom for home use, from any country, in any ship or vessel of any country, however navigated, any corn, maize, grain, flour, meal, rice, or potatoes, the growth or produce of any country, anything in the law of navigation to the contrary in anywise notwithstanding.

II. And be it enacted, that from and after the said passing of this act, until the said first day of *September* inclusive in this present

year, any corn, maize, grain, flour, meal, rice, or potatoes, the growth or produce of any country, which may have been warehoused in the United Kingdom for exportation only, may be entered for home consumption, anything in the law of navigation to the contrary in anywise notwithstanding.

NAULAGE [*naulum*, Lat.], the freight of passengers in a ship.

NAVY [*navis*, Lat., a ship], an assemblage of ships, commonly ships of war; a fleet.

The method of ordering seamen in the royal fleet, and keeping up a regular discipline there, is directed by certain express rules, articles, and orders, first enacted by the authority of Parliament soon after the Restoration. As to the register of seamen, see 5 & 6 Wm. IV., c. 19; 1 *Bl. Com.* 420.

NAVY BILLS, bills drawn by officers of the royal navy for their half-pay, &c. It is a capital felony to forge them. 56 Geo. III., c. 101, § 4.

NAZERANNA, a sum paid to government, as an acknowledgment for a grant of lands, or any public office. *Encyc. Lond.*

NE ADMITTAS (that you admit not), a writ directed to the bishop for the plaintiff or defendant, where a *quare impedit* is depending, when either party fears that the bishop will admit the other's clerk during the suit between them; it ought to be issued within six calendar months after the avoidance, before the bishop may present by lapse; for it is in vain to sue out this writ when the title to present is devolved upon the bishop. *F. N. B.* 37.

NEAT or NET, the weight of a pure commodity alone, without the cask, bag, dross, &c. *Comm. Term.*

NEAT-LAND, land let out to the yeomanry.

NECATION [*neco*, Lat.], the act of killing.

NECESSARIES, a relative term, not strictly limited to such things as are absolutely requisite for support and subsistence, but to be construed liberally, and varying with the state and degree, the rank, fortune, and age of the infant. It has always been held that an infant is bound to pay a reasonable price for such necessary things as relate to his maintenance and education—as for food, lodging, apparel, medical attendance, and schooling—unless credit be given solely to the parent, which is presumed to be the fact, if it appear that the infant was placed at school, or is supported by him. *Story on Contracts*, 39.

While a husband and wife live together, and the goods supplied to the wife are necessities both in quality and quantity, the law raises an uncontrollable presumption of assent on the part of the husband to the contract, and renders him liable therefor. If he omit to furnish her with necessities, he makes her impliedly his agent to purchase them. A general prohibition, therefore, to all persons not to supply the wife with necessities is void. *Ibid.* 46.

Necessarium est quod non potest aliter se habere.

Bacon.—(That is necessary which cannot otherwise be dispensed with.)

NECESSARY INTROMISSION, when a husband or wife continues in possession of the other's goods, after their decease, for preservation. *Scotch Phrase.*

NECESSITAS CULPABILIS (a blameable necessity).

Necessitas est lex temporis et loci. H. H. P. C. 54.—(Necessity is the law of time and place.)

Necessitas excusat aut extenuat delictum in capitalibus, quod non operatur idem in civilibus. Bacon.—(Necessity excuses or extenuates delinquency in capital, which would not operate the same in civil cases.)

Necessitas facit licitum quod alias non est licitum. 10 Co. 61.—(Necessity makes that lawful which otherwise is not lawful.)

Necessitas inducit privilegium quoad jura privata. Bac. Max. 25.—(Necessity gives a privilege with reference to private rights.)

The necessity involved in this maxim has been considered under three different heads, viz:—1st, necessity of self-preservation; 2d, of obedience; and, 3d, necessity resulting from the act of God, or of a stranger. *Noy's Max.* 32.

Necessitas non habet legem. Plow. 18.—(Necessity has not any law.)

Necessitas publica major est quam privata. Bacon.—(Public necessity is greater than private.)

Death, it has been observed, is the last and furthest point of particular necessity, and the law imposes it upon every subject, that he prefer the urgent service of his king and country to the safety of his life. *Noy's Max.* 34.

Necessitas, quod cogit, defendit. H. H. P. C. 54.—(Necessity defends what it compels.)

Necessitas sub lege non continetur, quia quod alias non est licitum necessitas facit licitum. 2 Inst. 326.—(Necessity is not restrained by law; since what otherwise is not lawful, necessity makes lawful.)

Necessitas vincit legem; legum vincula irridet. Hob. 144.—(Necessity overcomes law; it breaks the chains of laws.)

NECESSITY, a constraint upon the will, whereby a person is urged to do that which his judgment disapproves, and which, it is to be presumed, his will (if left to itself) would reject. A man, therefore, is excused for those acts which are done through unavoidable force and compulsion.

Compulsion or necessity may arise—

(1) From civil subjection.

(2) From duress *per minas*.

(3) From the choice of the least pernicious of two evils, one of which is unavoidable; or,

(4) From that of want or hunger, which is however no legitimate excuse. 4 *Bl. Com.* 27.

NECESSITY, homicide by, a species of justifiable homicide, because it arises from some unavoidable necessity, without any will, intention, or desire, and without any inadver-

tance or negligence in the party killing, and therefore without any shadow of blame. As, for instance, by virtue of such an office as obliges one, in the execution of public justice, to put a malefactor to death, who has forfeited his life to the laws of his country. But the law must require it, otherwise it is not justifiable. 4 *Bl. Com.* 178.

NECK-VERSE, the Latin sentence *miserere mei Deus*, Ps. li. 1, because the reading of it was made a test by which to distinguish those who, in presumption of law, were qualified, in point of learning, and admissible to benefit of clergy.

If a monk had been taken for stealing of hacon,

For burglary, murder, or rape;

If he could but rehearse (well prompt) his neck-verse,

He never could fail to escape.

Brit. Apollo, 1710.

Nec tempus nec locus occurrit regi. Jenk. Cent. 190.—(Neither time nor place affects the king.)

Ne curia deficeret in justitiâ exhibendâ. 4 Inst. 63.—(Lest the court should be deficient in showing justice.)

Nec veniam, effuso sanguine, casus habet. 3 Inst. 57.—(Where blood is spilled the case is unpardonable.)

Nec veniam, læso Numine, casus habet. Jenk. Cent. 167.—(Where the Divinity is insulted, the case is unpardonable.)

NE DISTURBA PAS, the general issue in *quare impedit*. It simply denies that the defendant obstructed the presentation, and is adapted to no other ground of defence. *Step. Plead.* 173.

NE DONA PAS or **NON DEDIT**, the general issue in a formedon, now abolished. It denied the gift in tail to have been made in manner and form as alleged; and was therefore the proper plea, if the tenant meant to dispute the fact of the gift, but did not apply to any other case. 5 *East*, 289.

NE EXEAT REGNO, sometimes ungrammatically termed *ne exeat regnum*, a prerogative writ issued, as its name imports, to prevent a person from leaving the kingdom.

It is said to have been introduced between the reign of King John and that of Edward I. It was originally applied only to great political objects and purposes of state for the safety or benefit of the realm. It seems to have been applied to mere civil purposes in the reign of Queen Elizabeth. In the reign of James I. it seems to have been so firmly established as a remediable civil process grantable in Chancery, that it was made the subject of one of Lord Bacon's ordinances. It is there declared, that "writs of *ne exeat regnum* are properly to be granted according to the suggestion of the writ in respect of attempts prejudicial to the king and state, in which case the Lord Chancellor will grant them upon prayer of any of the principal secretaries, without cause showing, or upon such information as his lordship shall think of weight. But otherwise also

they may be according to the practice of long time used, in case of interlopers of trade, general bankrupts, in whose estates many subjects are interested, or other cases that concern multitudes of the king's subjects; also, in cases of duels, and divers others." No. 89.

This writ will not be granted unless in cases of equitable debts (which are certain, actually payable), and not contingent, and claims, except for alimony decreed to a wife, which will be enforced against her husband by this writ, if he be about to quit the realm, on account of the inability of the Ecclesiastical Court to enforce its due payment, and for an account in which a balance is admitted by the defendant; but a larger sum is insisted on by a creditor, and this in aid of the concurrent jurisdiction of equity.

It is but a civil process to hold a person to bail for an equitable debt under the same circumstances as those in which, if it were a legal debt, he might be held to bail at law.

The writ may be applied for at any period of the suit, even before the defendant has been served with a subpoena, but the bill must be on the file. It can be obtained *ex parte*, either by petition or motion. The application must be supported by an affidavit verifying the material allegations in the bill; it must be positive as to the equitable debt, and as to the intention to quit the kingdom, though if the debt appear upon the Master's report, or by admissions in the answer, the affidavit is unnecessary. After order obtained, the writ is issued, and the sheriff of the county into which it is issued, executes it; but he cannot break open doors and take a party in bed. The defendant may immediately apply to discharge the writ on affidavits, showing that it was issued improperly. The sheriff is not compellable to take security, although it is usual so to do.

Negatio conclusionis est error in lege. Wing. 268.—(The negative of a conclusion is error in law.)

Negatio destruit negationem, et ambæ faciunt affirmativum. Co. Lit. 146.—(A negative destroys a negative, and both make an affirmative.)

Negatio duplex est affirmatio.—(A double negative is an affirmative.)

NEGATIVE, a particle of denial.

A negative cannot be proved or testified by witnesses, only an affirmative. 2 *Inst.* 662. But this rule does not apply where one party charges another with a culpable omission or breach of duty; in such a case, the person who makes the charge is bound to prove it, though it may involve a negative, for it is one of the first principles of justice, not to presume that a person has acted illegally till the contrary is proved. Where the presumption of law is in favour of a defendant's plea, then the plaintiff must disprove the plea, though he may have to prove a negative. 1 *Phil. Evid.* c. 7, § 4.

It is a pleading rule that two negatives do

not make a good issue. Although no verification is generally necessary in a negative pleading, yet it is the practice to conclude with a verification all negative as well as affirmative pleadings, which do not conclude to the contrary. *Step. Plead.* 481.

It was formerly a question of no inconsiderable difficulty, and from the apparent contrariety of the authorities, subject to much discussion and vexatious controversy in courts of equity, whether a purely negative plea to a bill was a legitimate mode of defence, as it unquestionably is at law. It was a question whether a defendant could allege in opposition to the claims of the plaintiff as heir-at-law, that the plaintiff was not heir-at-law. But that doubt has been dissipated, and it is now firmly established that such a plea is good. *Story's Eq. Plead.* 507.

NEGATIVE PREGNANT, a form of denial which implies or carries with it an affirmative.

This is considered as a fault in pleading, because the meaning of such a form of expression is ambiguous. The rule against a negative pregnant has been very much relaxed, for many cases have occurred in which, upon various grounds of distinction from the general rule, such form of expression has been held free from objection. *Step. Plead.* 419.

NEGGILDARE, to claim kindred.

NEGLIGENCE, acting carelessly. The question of negligence is usually one of fact for a jury. The question may be either one of law, where the case falls within any general and settled rule or principle; or of fact, where no such rule or principle is applicable to the particular circumstances, and where, therefore, the conclusion of negligence must be found or excluded by the jury. See **DILIGENCE**.

NEGLIGENCE, homicide by. See **MISADVENTURE**.

NEGLIGENT ESCAPE, where a person gets out of the custody of the sheriff or other officer, without consent.

Negligentia semper habet infortuniam comitem. Co. Lit. 246.—(Neglect always has misfortune for a companion.)

NEGOCE [*negotium*, Lat.], business, trade, management of affairs.

NEGOTIABLE INSTRUMENTS, those, the right of action upon which is by exception from the common rule, freely assignable from one to another, such as bills of exchange and promissory notes.

It is not essential, however, to the character of a bill of exchange or promissory note that it should be negotiable, but it is essential to the negotiability of a bill between all persons, except the government, that it should be payable to order or to bearer, or that some other equivalent words should be used, authorising the payee to assign or transfer the same to third persons, such, for example, as payable "to A., or his agent." Still, however, although not transferable by

endorsement, without such words, so as to give an action to the indorsee against other parties to the bill; yet, the indorsement will give an action against the payee himself; because, in legal effect, it amounts to the drawing of a bill in favour of the indorsee against the drawee.

The mode of transfer depends upon the manner in which the bill is originally made negotiable. If it is payable to the bearer, then it may be transferred by mere delivery, the person delivering it ceasing to be deemed a party thereto. But if the bill be originally payable to a person, or his order, there it is properly transferable by indorsement, because, in no other way will the transfer convey the legal title to the holder, so that he can, at law, hold the other parties liable to him, *ex directo*, whatever may be his remedy in equity. If there be an assignment thereof, without indorsement, the holder will thereby acquire the same rights only as he would acquire upon an assignment of a bill not negotiable. But there is a period, when bills cease altogether to be negotiable, in whose hands soever they may then be, so far as respects the antecedent parties thereto, who would be discharged therefrom by the payment thereof. As if a bill be once paid by the acceptor, *after* it has become due, it loses all its vitality, and can no longer be negotiable. So if it be dishonoured by the acceptor. But bills remain negotiable even after payment, so far as respects the parties, who shall knowingly negotiate the same afterwards; for, in such a case, the negotiation cannot prejudice any other persons, and can only prejudice themselves. *Story on Bills*, 220.

Promissory notes were made negotiable by 3 & 4 Anne, c. 9, and 7 Anne, c. 25, and placed in all respects upon the same footing with inland bills of exchange.

NEGOTIATION, treaty of business, whether public or private.

NEGOTIORUM GESTOR, a person who, spontaneously, and without the knowledge or consent of the owner, intermeddles with his property, as to do work on it, or to carry it to another place, &c.

In cases of this sort, as he acts wholly without authority, there can, strictly speaking, be no contract. But the Roman law raises a *quasi* mandate, by implication, for the benefit of the owner in many of such cases. Nor is an implication of this sort wholly unknown to the common law, where there has been a subsequent ratification of the acts by the owner; and sometimes, where unauthorised acts are done, positive presumptions are made by law for the benefit of particular parties. Thus, if a stranger enter upon a minor's lands, and take the profits, the law will, in many cases, oblige him to account to the minor for the profits as his bailiff; for it will be presumed that he entered to take them in trust for the infant.

As the *negotiorum gestor* interferes without

any actual mandate, there is good reason for requiring him to exert the requisite skill and knowledge to accomplish the object or business which he undertakes; to do every thing which is incident to or dependent upon that object or business, and to finish whatever he has begun. Without such an obligation, every person in the community would be at the mercy of ignorant and officious friends.

Story's Bailments, 204.

NEIFE, a woman born in villenage.

NEIFTY. See NATIVITAS.

NE INJUSTE VEXES, a writ founded on Magna Charta that lay for a tenant distrained by his lord, for more services than he ought to perform; and it was a prohibition to the lord not unjustly to distrain or vex his tenant: in a special use it was where the tenant had prejudiced himself by doing greater services or paying more rent without constraint, than he needed; for, in that case, by reason of the lord's seisin, the tenant could not avoid it by avowry, but was driven to his writ for remedy. *F. N. B.* 10. Abolished by 3 & 4 *Wm. IV.*, c. 27, § 35.

NEMBDA [Teut.], a jury.

NEMINE CONTRADICENTE, the phrase to signify the unanimous consent of the members of the House of Commons to a vote or resolution, and it is analagous to the term *nemine dissentiente* in the House of Peers.

Neminem oportet esse sapientiores legibus. Co. Lit. 97.—(Nobody need be wiser than the laws.)

Nemo admittendus est inhabilitare seipsum. Jenk. Cent. 40.—(Nobody is to be admitted to incapacitate himself.)

Nemo agit in seipsum. Jenk. Cent. 40.—(No one acts against himself.)

Nemo aliquam partem recte intelligere potest, antequam totum, iterum atque iterum perlegit. 3 Co. 59.—(No one can properly understand any part of a thing till he has read through the whole again and again.)

Nemo allegans suam turpitudinem est audiendus. Civil Law Maxim.—(No one alleging his own baseness is to be heard.)

The courts of law have properly rejected it as a rule of evidence. 7 *T. R.* 601.

Nemo cogi potest præcise ad factum, sed in id tantum quod interesse.—(No person can be compelled precisely to the act, but to that only which interests him.)

Nemo cogitur rem suam vendere, etiam justo pretio. 4 Inst. 275.—(No one is obliged to sell his own property, even for the full value.)

Nemo contra factum suum venire potest. 2 Inst. 66.—(No one can come against his own deed.)

Nemo dat qui non habet. Jenk. Cent. 250.—(No one gives who possesses not.)

Nemo debet bis puniri pro uno delicto: et Deus, non agit bis in ipsum. 4 Co. 43.—(No one should be punished twice for one fault; and God punishes not twice against himself.)

Nemo debet bis vexari, si constat curiæ quod sit pro una et eadem causâ. 5 Co. 61.—(No

man ought to be twice punished, if it appear to the court that it is for one and the same cause.)

Nemo debet ex aliend jacturâ lucrari.—(No person ought to gain by another person's loss.)

Nemo debet esse judex in propriâ causâ.—12 Co. 113.—(No one should be judge in his own cause.)

In civil actions, the general rule is, that the judgment of a court of concurrent jurisdiction, directly upon the point is, as a plea, a bar, or as evidence, conclusive between the same parties upon the same matter directly in question in another court. The exception to this rule is in the action of ejectment. 2 *Schw. N. P.* 763.

It is also well established in the criminal law, that when a man is indicted for an offence, and acquitted, he cannot afterwards be indicted for the same offence, provided the first indictment were such that he could have been lawfully convicted upon it by proof of the facts contained in the second indictment. *Arch. Cr. Plead.* 88.

Nemo debet immiscere se rei alienæ—ad se nihil pertinenti. Jenk. Cent. 18.—(Nobody should interfere in another's business—in nothing relating to him.)

Nemo debet rem suam sine facto aut defectu suo amittere. Co. Lit. 263.—(No one should lose his property without his own act or negligence.)

Nemo duobus utatur officiis. 4 Inst. 109.—(No one should fill two offices.)

Nemo est hæres viventis. Co. Lit. 8.—(No one is the heir of a living man.)

Nemo ex alterius detrimento fieri debet locupletari. Jenk. Cent. 4.—(No man ought to be made rich out of another's injury.)

Nemo ex dolo suo proprio relevetur, aut auxilium capiat. Jur. Civ.—(No one is relieved or gains an advantage from his own proper deceit.)

Nemo inauditus nec summonitus condemnari debet, si non sit contumax. Jenk. Cent. 8.—(No man should be condemned unheard and unsummoned, unless for contumacy.)

Nemo militans Deo implicetur secularibus negotiis. Co. Lit. 70.—(No man warring for God should be troubled by secular business.)

Nemo nascitur artifex. Co. Lit. 97.—(No one is born an artificer.)

Nemo patriam in quâ natus est exuere nec ligentia debitum ejurare possit. Co. Lit. 129.—(No one can disclaim the country in which he was born, nor abjure the bond of allegiance.)

Nemo potest contra recordum verificare per patriam. 2 Inst. 380.—(No one can verify by jury against a record.)

Nemo potest esse tenens et dominus. Gilb. Ten. 142.—(No man can be tenant and lord.)

Nemo potest facere per alium, quod per se non potest. Jenk. 237.—(No one can do through another what he cannot do through himself.)

Nemo potest habere duas militias nec duas dignitates, quia difficile est ut unus homo vices duorum sustineat. 4 Co. 118.—(No one can fill two offices, or two dignities, because it is difficult that one man should fill the places of two.)

Nemo potest plus juris ad alium transferre quam ipse habet. Co. Lit. 309; Wing. 56.—(No one can transfer a greater right to another than he himself has.)

Nemo præsimitur alienam posteritatem suæ prætulisse. Wing. 285.—(No one is presumed to have preferred another's posterity to his own.)

Nemo præsimitur donare.—(No one is presumed to give.)

Nemo præsimitur esse immemor suæ æternæ salutis, et maxime in articulo mortis. 6 Co. 76.—(No one is presumed to be forgetful of his own eternal welfare; and more particularly in the act of death.)

Nemo præsimitur malus.—(No one is presumed bad.)

Nemo præsimitur ludere in extremis.—(No one is presumed to trifle at the point of death.)

Nemo prohibetur plures negotiationes sive artes exercere. 11 Co. 54.—(No one is restrained from exercising several businesses or arts.)

Nemo prohibetur pluribus defensionibus uti. Co. Lit. 304.—(No one is restrained from using several defences.)

Nemo prudens punit ut præterita revocentur, sed ut futura præveniantur. 3 Buls. 179.—(No wise man punishes, that things done may be revoked, but that future wrongs may be prevented.)

Nemo punitur pro alieno delicto. Wing. 336.—(No one is punished for the crime of another.)

Nemo punitur sine injuriâ, facto, seu defaulto. 2 Inst. 287.—(No one is punished unless for some injury, deed, or default.)

Nemo redditum invito domino percipere, et possidere potest. Co. Lit. 323.—(No one can take and enjoy the rent, the lord unconsenting.)

Nemo tenetur ad impossibile. Jenk. Cent. 7.—(No one is bound to an impossibility.)

Nemo tenetur armare adversarum contra se. Wing. 665.—(No one is bound to arm his adversary against himself.)

Nemo tenetur divinare. 4 Co. 28.—(No one is bound to foretell.)

Nemo tenetur informare qui nescit, sed quisquis scire quod informat. Lane. 110.—(No one who is ignorant is bound to inform, but every one ought to know what he informs about.)

Nemo tenetur jurare in suam turpitudinem.—(No one is bound to testify to his own baseness.)

Nemo tenetur seipsum infortuniis et periculis exponere. Co. Lit. 253.—(No one is bound to expose himself to misfortunes and dangers.)

Nemo tenetur seipsum accusare. Wing. 486.—(No one is bound to accuse himself.)

Nemo utatur duobus officiis. 4 Inst. 100.—(No one should fill two offices.)

Nemo unquam vir magnus fuit, sine aliquo divino afflatu. Cic.—(No one was ever a great man without some divine spirit.)

NEPHEW [*nepos*, Lat.], the son of a brother or sister.

A nephew, according to the civil law, is in the third degree of consanguinity; but, according to the canon law, in the second.

NE RECIPIATUR, a caveat entered by a defendant to prevent a plaintiff from trying his cause at a certain sittings, where the cause is not entered in due time.

NE UNQUES ACCOUPLE IN LOYAL MATRIMONIE, a plea whereby a tenant in the real action of dower, *unde nihil*, controverts the validity of the demandant's marriage with the person out of whose estate she claims dower. To this plea, the demandant must reply that she was accoupled in lawful matrimony at A., in such a diocese, upon which a writ issues to the bishop of such diocese, requiring him to certify the fact to the court. Co. Ent. 180.

NE UNQUES EXECUTOR OR ADMINISTRATOR, a plea whereby a defendant denies his being executor or administrator. It does not deny the cause of action, but only that the defendant is the personal representative of the testator or intestate. 1 Saund. 207 a.

NE UNQUES SEISIE QUE DOWER, a plea in dower which is often called the general issue, but it does not seem to fall strictly within the definition of that term. In fact, though it concludes to the country, it does not, properly speaking, contain any denial or traverse of the count, and must therefore be considered as an anomaly or exception in the system of pleading. The reason is perhaps to be found in the great antiquity of this action of dower, which was in full use, at least as early as the time of Glanville, a period considerably anterior to the complete establishment of the doctrine of issue, and of the rules by which it is produced. Step. Plead. liv.

NEVER INDEBTED, *plea of*, a species of traverse which occurs in actions of debt on simple contract, and is resorted to when the defendant means to deny in point of fact the existence of any express contract to the effect alleged in the declaration, or to deny the matters of fact from which such contract would by law be implied.

NEW ASSIGNMENT, a form of pleading which is sometimes rendered necessary by the generality of the declaration. It is used when a defendant has pleaded to a different matter from that which constitutes the real subject of complaint; and should be framed so as to distinguish the true ground of action from that which is covered by the plea. It most frequently occurs in an action of trespass, as where two assaults have been committed, one of which is justifiable and the other indefensible; or in trespass *quare clauum fregit*, when the defendant claims a right of way. The obligation occasionally imposed upon a defendant, to plead payment in dis-

charge of the whole or a part of the plaintiff's demand, sometimes renders a new assignment necessary, when a defendant supposes, or affects to suppose, that a debt which has been partially satisfied by payment, is that for which the action is brought; but it seems the Judges have come to a resolution of not allowing new assignments to a general plea of payment.

As the object of a new assignment is to correct a mistake occasioned by the generality of a declaration, it always occurs in answer to a plea, and is, therefore, in the nature of a replication.

The new assignment is delivered to the defendant's attorney or agent, after which the defendant may be ruled, &c., to plead to it, in the same manner as upon the original declaration. 1 *Saund.* 229; *Step. Plead.* 253.

NEW STYLE. See NEW YEAR'S DAY.

NEW TRIAL. If any defect of judgment happen from causes wholly extrinsic, *i. e.*, arising from matters foreign to or *dehors* the record, the only remedy the party injured by it has (except error *coram nobis* or *vobis* in some few cases), is by applying to the court for a new trial, which is in substitution of a bill of exceptions. But the court must be satisfied that there are strong probable grounds to suppose that the merits have not been fairly and fully discussed, and that the decision is not agreeable to the justice and truth of the case, before they will grant a new trial.

The following is a summary of the cases in which a new trial will or will not be granted:

(1) Mistake, &c., of the Judge. If a Judge misdirect a jury, even in a penal action, it is, generally, a good ground for a new trial. So if a Judge improperly nonsuit a plaintiff. So if a Judge admit improper evidence, or reject evidence which ought to be admitted, by which means the result of the trial or inquiry has been different from what it otherwise would have been. An objection to the applicability of evidence must be made before the summing up. Where a bill of exceptions has been tendered, the court will never grant a new trial upon the same point of law, unless the party consent to waive his bills of exceptions.

(2) Default or misconduct of the officer of the court. As where a cause is, by mistake, entered in a wrong list, and the cause is tried as undefended in the defendant's absence.

(3) Default or misconduct of the jury. If a juror have been sworn by a wrong surname, and it has been productive of some injustice. If a jury find a verdict contrary to evidence. For excessive damages, but not for the smallness of the damages, unless it has arisen from some mistake or unfair practice. For the misconduct of the jury, as if they had eaten or drunk at the expence of the party for whom they had afterwards found a verdict; or if they determined their verdict by lots, or if any of them had declared that the plaintiff should never have a verdict.

But if the information of such misconduct come from any of the jurors, or from the unsuccessful party, the court will not receive it, although in some degree confirmed by evidence *aliunde*.

(4) Absence, &c., of counsel or attorney. The instances are very rare in which the court has granted a new trial where a verdict has been obtained against a party on account of the absence of his counsel, &c.

(5) Default or misconduct of the opposite party. If a party for whom a verdict is afterwards given, deliver to the jury, after they have left the bar, evidence which had not been adduced in court, a new trial will be granted. So if he have labored the jury, or used improper influence with them. So misleading or taking by surprise the opposite party. So where no notice of trial had been given; but if the defendant appear to defend, this irregularity is waived.

(6) Default or misconduct of witnesses. The general rule is, that a new trial will not be granted on the ground that evidence has not been given that might have been given at the trial, for the plaintiff ought, if unprepared with his evidence, either to make application to postpone the trial before the jury are sworn, or should withdraw his record and not take the chance of a verdict. The court have granted a new trial where it appeared clearly that the plaintiff's case was a mere fiction supported by perjury, which the defendant could not at the time of the trial be prepared to answer.

(7) Discovery of new evidence after the trial. A new trial will seldom be granted where a verdict has been given against a party, or a plaintiff has been nonsuited for want of evidence which might have been produced at the trial, because it would tend to introduce perjury. But if new evidence have been discovered after the trial, the court will grant a new trial upon payment of costs, if it be necessary, in order to do justice between the parties, but the discovery of witnesses who can contradict those produced on the former trial, seems to be no ground for a new trial, nor will the court grant a new trial to let a party into a defence of which he was apprized at the first trial.

(8) Error in pleadings, variance, &c. This will form no ground for a new trial, for a Judge might amend, as a general rule, at the trial.

(9) Where one of several issues, &c., has been wrongly decided. If the court grant a new trial upon this ground, it must extend to all the issues.

(10) Where the action or defence is trifling or vexatious. The value or amount must be 20*l.* at least, to induce the court to interfere; unless on trials before the sheriff in which the limited sum is 5*l.*, or the verdict involve some particular right independent of the damages.

(11) Where there has been a previous new trial. If the jury for the second trial find for the party against whom the former verdict

was given, the court, if the case be doubtful, or the second verdict do not accord to the justice of the case, may be induced to grant a third trial, but this is entirely in the discretion of the court, even after two concurring verdicts.

(12) Where leave has been reserved to enter a nonsuit or verdict. The court may, instead of allowing a verdict or nonsuit to be entered, send down the cause for a new trial, if it be more in accordance with the justice of the case.

A new trial may be awarded for the same causes, after writ of trial and enquiry before the sheriff, as after a verdict. And so in penal actions. Also, in actions of ejectment, if verdict found for the plaintiff; but where the verdict is for the defendant, the court will seldom grant a new trial, because the plaintiff may, if he will, bring a new action. In replevin, where the verdict is for the plaintiff, the court will be more cautious in granting a new trial than in other actions, and will not grant it unless upon very clear grounds; for the landlord has other remedies for his rent, and a new trial would renew the liability of the sureties.

The motion for a rule to show cause why a verdict should not be set aside and a new trial granted, is made in the court from which the *venire* issued, unless in the case of an issue out of Chancery, when it is made to the court directing it. The motion is made by the party aggrieved by the first trial, but when the action is against several defendants the application should be made on the behalf of all of them; and, therefore, when one defendant was found guilty, and the other acquitted, it was holden that the former could not have a new trial. The motion for the rule *nisi* must be made within four days after the *distringas* is returnable, if the cause be tried in term; but if the cause be tried in vacation, then within the four first days of the term next after the trial.

A new trial cannot, in general, be moved for after a motion in arrest of judgment, nor after error brought.

When the case is called on for argument, the Judge who tried the cause, or, if it were tried by a Judge of another court, the junior *puisne* Judge, will read his report of the trial; after which the counsel on the opposite side show cause against the rule; the counsel for the party who moved for the rule *nisi*, speak in support of it, and the court then state their opinion, either discharging or making absolute the rule.

If the court make the rule absolute, they may do so upon terms, if necessary; such as that witnesses infirm or going beyond sea may be examined upon interrogatories, or that their evidence may be read from the Judge's notes of the first trial; that certain deeds, books, papers, &c., may be produced at the trial, that certain facts, not intended to be litigated, may be admitted, or that the party may make discovery of certain facts upon oath, in order to prevent the necessity

of having recourse to a bill of discovery in equity for it.

The party obtaining the rule is not bound to proceed to the new trial in any limited time, but if the plaintiff do not proceed to the second trial, the defendant may carry down the record by proviso, after the next term or assizes from that in which the new trial was granted.

It is entirely in the discretion of the court whether they will oblige the party applying for a new trial to pay costs as a condition precedent to his proceeding to a second trial. If a new trial be granted upon a ground not opened upon the first trial, it will be upon payment of costs. By R. H., 2 Wm. IV., r. 64, "if a new trial be granted without any mention of costs in the rule, the costs of the first trial shall not be allowed to the successful party, though he succeed on the second." Where the costs are ordered to abide the event of the second trial, if the same party succeed on both trials, he shall have the costs of the first as well as the second. By "the event of the second trial," is meant the ultimate event of the cause; and, therefore, if the verdict at the second trial be set aside, and on the third trial the ultimate event be the same as on the first trial, the party will be entitled to the costs of the first trial. *Chit. Arch. Prac.* 1086.

NEW YEAR'S DAY, the first of January, and the day on which is commemorated the circumcision of the Saviour, as being the eighth from the 25th of December, his supposed day of nativity. The 25th of March was the civil and legal new year's day, till the alteration of the style in 1752, when it was permanently fixed to the 1st January.

In Scotland, the year was, by a proclamation which bears date 27th November, 1599, ordered thenceforth to commence in that kingdom on the 1st January instead of the 25th March. *Encyc. Lond.*

NEWGATE, *delivery of*. See CENTRAL CRIMINAL COURT.

NEWS, something not heard before.

Spreading false news to make discord between the sovereign and nobility, or concerning any great man of the realm, is a misdemeanour punishable at common law with fine and imprisonment; which is confirmed by stat. West. I., 3 Edw. I., c. 34; 2 Ric. II., st. 1, c. 5; and 12 Ric. II., c. 11.

NEWSPAPERS, publications in numbers, consisting commonly of single sheets, and published at short and stated intervals, conveying intelligence of passing events. The 6 & 7 Wm. IV., c. 76, repealed the former duty on newspaper stamps, and imposed in its stead the duties specified in the following schedule:—

For every sheet or other piece of paper whereon any newspaper shall be printed, one penny.

And where such sheet or piece of paper shall contain on one side thereof a superficies, exclusive of the margin of the letterpress, exceeding 1,530 inches, and not ex-

ceeding 2,295 inches, the additional duty of one halfpenny.

And where the same shall contain on one side thereof a superficies, exclusive of the margin of the letterpress, exceeding 2,295 inches, the additional duty of one penny.

Provided always, that any sheet or piece of paper containing on one side thereof a superficies, exclusive of the margin of the letterpress, not exceeding 765 inches, which shall be published with and as a supplement to any newspaper chargeable with any of the duties aforesaid, shall be chargeable only with the duty of one halfpenny.

And the following shall be deemed and taken to be newspapers chargeable with the said duties, viz. :—

Any paper containing public news, intelligence, or occurrences, printed in any part of the United Kingdom, to be dispersed and made public.

Also, any paper printed in any part of the United Kingdom weekly, or oftener, or at intervals, not exceeding twenty-six days, containing only or principally advertisements.

And also any paper containing any public news, intelligence, or occurrence, or any remarks or observations thereon printed in any part of the United Kingdom for sale, and published periodically or in parts or numbers at intervals, not exceeding twenty-six days between the publication of any two such papers, parts, or numbers, where any of the said papers, parts, or numbers respectively shall not exceed two sheets of the dimensions hereinafter specified (exclusive of any cover or blank leaf, or any other leaf upon which any advertisement or other notice shall be printed), or shall be published for sale for a less sum than 6d., exclusive of the duty by this act imposed thereon: provided always, that no quantity of paper less than a quantity equal to twenty-one inches in length, and seventeen inches in breadth, in whatever way or form the same may be made or may be divided into leaves, or in whatever way the same may be printed, shall with reference to any such paper, part, or number as aforesaid, be deemed or taken to be a sheet of paper.

And provided also, that any of the several papers hereinbefore described shall be liable to the duties by this act imposed thereon, in whatever way or form the same may be printed or folded, or divided into leaves or stitched, and whether the same shall be folded, divided, or stitched, or not.

Exemptions. Any paper called "Police Gazette, or Hue and Cry," published in Great Britain by authority of the Secretary of State, or in Ireland by the authority of the Lord Lieutenant.

Daily accounts or bills of goods imported and exported, or warrants or certificates for the delivery of goods, and the weekly bills of mortality; and also papers containing any list of prices current, or of the state of the markets, or any account of the arrival,

sailing, or other circumstances relating to merchant ships or vessels, or any other matter wholly of a commercial nature: provided such bills, lists, or accounts do not contain any other matter than what hath been usually comprised therein.

Regulations, &c. A discount of 25 per cent. is to be allowed on the above duties on newspapers printed in Ireland. § 2.

In order to prevent fraud in the returns as to newspapers, it is enacted that from the 31st of December, 1836, a separate or distinctive stamp or die shall be used for each newspaper. § 3.

No person is to print or publish a newspaper until after a declaration has been made and lodged at the stamp office, containing certain particulars (specified in the act) as to the names and addresses of the printer and certain of the proprietors of such paper, &c., under a penalty of 50l. Persons wilfully making a false or defective declaration are, upon conviction, to be deemed guilty of a misdemeanour. §§ 6, 7.

There are a number of regulations intended to provide for the discovery and liability of the printer and proprietors, the security of the duties, and the prevention of the sale of unstamped papers.

A penalty of 20l. is imposed on any person printing, publishing, selling, &c., newspapers not duly stamped; and it is declared to be lawful for any officer of stamps, or any person authorised by the commissioners in that behalf, to seize any such offender and take him before any justice having jurisdiction where the offence is committed, who shall summarily determine the matter, and upon conviction and default of payment, shall commit such offender to prison for some term not exceeding three nor less than one calendar month. § 17.

Penalty for sending abroad newspapers not duly stamped, 50l. § 18.

Justices may grant warrants to search for unstamped newspapers, and to seize presses, &c., used in printing the same, and on refusal of admittance, officers may break open doors, &c. Persons resisting officers liable to a penalty of 20l. §§ 22, 23.

NEXI, among the Romans, persons free-born, who, for debt, were delivered bound to their creditor, and obliged to serve him until they could pay the debt.

NEXT FRIEND. At law, an infant having a guardian, may sue by his guardian, as such, or by his next friend, though he must always defend by his guardian. In equity, he sues by next friend, and not by guardian, and defends by guardian.

A *feme covert*, if her husband is banished, or has abjured the realm, or has been transported for felony, may, both at law and in equity, maintain a suit in her own name as a *feme sole*, but generally she cannot sue, either at law or in equity, unless her husband be joined. But in equity, if her husband's interest be adverse to her, or where the suit relates exclusively to her separate estate,

then she sues by her next friend. But in this respect she is differently placed from an infant; for no person can exhibit a bill as her next friend without her consent; whereas an infant's consent to a bill filed in his name is not necessary. The next friend of an infant is *primæ facie* liable to the costs, which are however reimbursed to him out of the infant's estate, provided he have acted properly, and therefore his poverty or insolvency would be an incapacity; but the next friend of a *feme covert* does not incur the like responsibility.

Idiots and lunatics, found such by inquisition, sue by the committee of their estate. *Redes Tr. Pl. 29.*

NEXT OF KIN. See KINDRED.

NICOLE, an ancient name for Lincolne. *Cowell.*

NIDERLING, NIDERING, or NITHING, a vile, base person, or sluggard; chicken-hearted. *Spelm.*

NIECE [*neptis*, Lat.], the daughter of a brother or sister. See NEPHEW, as to the degree of consanguinity.

NIENT COMPRISE (not contained), an exception taken to a petition, because the thing desired is not contained in the deed or proceeding upon which the petition is founded.

NIENT CULPABLE (not guilty), a plea in criminal prosecutions.

NIENT DEDIRE (to disown nothing), to suffer judgment by not denying or opposing it, *i. e.*, by default.

NIGER LIBER, the black book or register in the Exchequer; chartularies of abbeys, cathedrals, &c.

NIGHT, that period of time when it is so dark that the countenance of a person cannot be discerned.

Housebreaking by night is burglary: which see.

Under the act against poaching by night, 9 Geo. IV., c. 69, § 12, the night is to be considered to commence at the expiration of the first hour after sunset, and to conclude at the beginning of the last hour before sunrise.

An arrest may be made on a *capias* on mesne process in the night; and also on a *ca. ss.*; and a writ of summons may be served during the night.

NIGHT MAGISTRATE, a constable of the night; the head of a watch-house. *Scott.*

NIGHT-WALKERS, vagrants, pilferers, disturbers of the peace. They may be arrested by the police, and committed to custody till the morning. 2 *Hale P. C.* 90.

NIHIL (nothing), a return made by a sheriff, &c., when the circumstances warrant it.

Nihil aliud potest rex in terris, cum sit Dei minister et vicarius, quam quod de jure potest. Itaque potestas juris sua est non injuriæ; cum sit auctor juris, non debet inde injuriarum nasci occasio unde jura nascentur. 11 Co. 74.—(The king being the minister and vicar of God, can do nothing on earth but is founded in justice. His own power, there-

fore, partakes of justice, not of wrong; since he is the author of justice, it becometh not that an opportunity of doing injury should arise where rights spring.)

NIHIL CAPIAT PER BREVE (that he take nothing by his writ), where an issue, arising upon a declaration or peremptory plea, is decided for the defendant, the judgment is, generally, that the plaintiff take nothing, &c., and that the defendant go thereof without day, &c., which is a judgment of *nihil capiat*, &c.

Nihil dat qui non habet. Jur. Civ.—(He gives nothing who has nothing.)

Nihil de re accrescit ei qui nihil in re quando jus accresceret habet. Co. Lit. 188.—(Nothing of a matter accrues to him who, when the right accrues, has nothing in that matter.)

Nihil est ad conciliandum gratius verecundi. —(There is nothing more agreeable to conciliation than mutual respect.)

Nihil facit error nominis cum de corpore constat. 11 Co. 21.—(An error of name is nothing when there is certainty as to the person.)

Nihil infra regnum subditos magis conservat in tranquillitate et concordia quam debita legum administratio. 2 Inst. 158.—(Nothing more preserves in tranquillity and concord those subjected to the government than a due administration of the laws.)

Nihil in lege intolerabilius est, eandem rem diversis jure censi. 4 Co. 93.—(Nothing in law is more intolerable than to rule a similar case by a diverse law.)

Nihil magis justum est quam quod necessarium est. Dav. 12.—(Nothing is more just than what is necessary.)

Nihil perfectum est dum aliquid restat agendum. 9 Co. 9.—(Nothing is perfect while something remains to be done.)

Nihil possumus contra veritatem. Doct. & Stud. D. 2, c. 6.—(We can prevail nought against truth.)

Nihil quod est contra rationem est licitum. Co. Lit. 97.—(Nothing is permitted which is contrary to reason.)

Nihil quod inconueniens est licitum est. Ibid.—(Nothing is permitted which is inconvenient.)

Nihil simul inventum est et perfectum. Co. Lit. 230.—(Nothing is invented and perfected at the same moment.)

Nihil tam conveniens est naturali æquitati quam unumquodque dissolvi eo ligamine quo ligatum est. 2 Inst. 359.—(Nothing is so consonant to natural equity than that the same thing be dissolved by the same means by which it was bound.)

Nihil tam conveniens est naturali æquitati, quam voluntatem domini rem suam in aliam transferre, ratam habere. 1 Co. 100.—(Nothing is so consonant to natural equity as to regard the intention of the owner in transferring his own property to another.)

Nihil tam proprium est imperii quam legibus vivere. 2 Inst. 63.—(Nothing is so proper for the empire than to live according to the laws.)

Nihil habet forum ex seculis. Bacon.—(The court has nothing to do with what is not before it.)

Nil sine prudenti fecit ratione vetustas. Co. Lit. 65.—(Antiquity did nothing without a good reason.)

Nil temerè novandum. Jenk. Cent. 163.—(Let nothing be rashly introduced.)

NIL DEBET (he owes nothing), the form of the general issue, not only in debt or simple contract, but in all other actions of debt not founded on a specialty. It is not now allowed in any action. *H. T.*, 4 *Wm. IV.* But this does not do away with this plea in penal actions under 21 Jac. I., c. 4. 1 *Saund.* 33 *a*, note *o*.

NIL DICIT, judgment by. See **JUDGMENT BY DEFAULT**.

NIL HABUIT IN TENEMENTIS, a plea to be pleaded in an action of debt only, brought by a lessor against lessee for years, or at will, without deed.

If both lessee and lessor sign a lease, the former is estopped from pleading this plea to an action of debt for rent by the lessor. It has, however, been held to be a good plea on a demise by deed poll, because, as to the lessee, it is no estoppel. It cannot be pleaded by a lessee in any case where occupation is enjoyed, for the court will not permit a tenant to impeach his landlord's title. In debt on bond, conditioned for the payment of rent reserved upon a demise according to certain articles, the defendant is estopped from saying that he had not anything in the land demised by the articles. In debt for rent by husband and wife, upon a lease by her and her first husband, it is a good plea that her husband was solely seised, and that she had nothing in the land. In assumpsit, for use and occupation, this is a bad plea. It is also no plea in bar of an avowry under 11 Geo. II., c. 19. *Woodf. Land. and Tent.* 641.

NIHILS or **NICHILS**, issues that a sheriff, apposed in the Exchequer, said were nothing worth and illeivable, for the insufficiency of the parties from whom due. Sheriffs' accounts are now passed by the commissioners for auditing the public accounts. 3 & 4 *Wm. IV.*, c. 99.

Nimia subtilitas in jure reprobatur. Wing. 26.—(Too much subtlety is blameable in law.)

Nimium altercando veritas amittitur. Hob. 344.—(By too much altercation truth is lost.)

NIMMER, a thief; a pilferer.

NISAN. See **ABIB**.

NISI PRIUS, a common law phrase which originated thus:—

An action was formerly triable only in the court where it was brought. But it was provided by Magna Charta, in case of the subject, that assizes of novel disseisin, and mort-ancestor (which were the most common remedies of that day) should thenceforward, instead of being tried at Westminster, in the superior court, be taken in their proper counties, and for this purpose justices were to be sent into every county once a year to

take these assizes there. 1 *Reeves*, 246. These local trials being found convenient, were soon applied not only to assizes, but to other actions: for, by the Statute of *Nisi Prius*, 13 Ed. I., c. 30, it is provided, as the general course of proceeding, that writs of *venire* for summoning juries to the superior courts shall be in the following form: *Præcipimus tibi quod venire facias curam justitiarum nostris apud Westm. in octabis Sc ti Michaelis NISI tuis et talis, tui die et loco ad partes illas venerint, duodecim, &c.* Thus the trial was to be had at Westminster only in the event of its not previously taking place in the county before the justices appointed to take the assizes. This clause of *nisi* or *nisi prius* is not now retained in the *venire*, but it occurs in the record and the judgment roll. And it is enforced by a subsequent statute of 14 Edw. III., c. 16, which authorises, at the present day, a trial before the justices of assize, in lieu of the superior court, and gives it the name of a trial at *nisi prius*. 2 *Inst.* 424.

NISI PRIUS RECORD, an instrument in the nature of a commission to the Judges at *nisi prius* for the trial of a cause. It is written on parchment, and is sealed in town causes on or before the day appointed by the chief justice in the sittings paper for the trial: in country causes it cannot be sealed after three weeks from the end of the term, unless a Judge's order be obtained for that purpose, which is granted as of course, and upon paying one of the masters his fee for it, he will seal the record at any time before the assizes, and obtain the order afterwards at his leisure. By R. H., 4 *Wm. IV.*, r. 18, "it shall not be necessary to repass any *nisi prius* record which shall have been once passed, and upon which the fees of passing shall have been paid; and if it shall be necessary to amend the day of the teste and return of the *distringas*, or *habens corpora*, or of the clause of *nisi prius*, the same may be done by the order of a Judge obtained on an application *ex parte*." This rule does not alter the necessity for resealing the record in causes which stand over from one sittings or assizes to another, and such resealing must be made before the sittings or assizes to which the cause stands over, and in default thereof the cause cannot be tried. Any variance between the record and the issue should be objected to at the time of trial, but the Judges have power to amend certain variances. 9 *Geo. IV.*, c. 15; 3 & 4 *Wm. IV.*, c. 42, § 23.

NIVICOLINI BRITONES, Welshmen, because they live near high mountains covered with snow. *Du Cange*.

NOBILE OFFICIUM, the equitable jurisdiction of the Court of Session in Scotland.

Nobiles magis plectuntur pecuniâ; plebes vero in corpore. 3 *Inst.* 220.—(The higher classes are more punished in money; but the lower in person).

Nobiles sunt qui arma gentilitia antecessorum suorum proferre possunt. 2 *Inst.* 595.—(The gentry are those who are able to pro-

duce armorial bearings derived by descent from their own ancestors.)

Nobiliiores et benigniores presumptiones in dubiis sunt præferendæ. Reg. Jur. Civ.—(In cases of doubt, the more generous and more benign presumptions are to be preferred.)

Nobilitas est duplex, superior et inferior. 2 Inst. 583.—(There are two sorts of nobility, the higher and the lower.)

NOBILITY, a division of the lay people in our civil state, comprehending dukes, marquesses, earls, viscounts, and barons. These had anciently duties annexed to their respective honours; they are created either by writ, *i. e.*, by summons to Parliament, or by letters patent, *i. e.*, by royal grant, and they enjoy many privileges, exclusive of their senatorial capacity. 1 *Bl. Com.* 396.

NOCENT, guilty; criminal.

NOCTANTER (by night), an abolished writ which issued out of Chancery, and returned to the Queen's Bench, for the prostration of enclosures, &c. 7 & 8 *Geo. IV.*, c. 27.

NOCTES and **NOCTEM DE FIRMA**, entertainment of meat and drink for so many nights. *Domesday.*

NODFYRS or **NEDFRI** [*neb*, Sax., necessary], necessary fire.

NOLLE PROSEQUI (to be unwilling to prosecute), a proceeding in the nature of an acknowledgment, or undertaking by the plaintiff when he has misconceived the nature of the action, or mistook the proper party to be sued, to forbear to proceed any further either in a suit altogether, or as to some part of it, or as to some of the defendants; but if entered as to part of a suit only, or as to some of the defendants, he is at liberty to proceed as to the rest. It differs from a *non pros*, which puts a plaintiff out of court with respect to all the defendants. If it be entered *before* judgment, the plaintiff may bring another action for the same cause, but if *after* judgment, it operates as a *retrahit*, and bars any future action.

In actions upon contracts against several defendants, if they join or sever in their pleas, the plaintiff cannot enter a *nolle prosequi* as to any one of them without releasing the others; but this is not the case in actions upon tort.

Where a *nolle prosequi* is entered as to the whole declaration, the defendant is entitled to his costs. By 3 & 4 *Wm. IV.*, c. 42, § 32, it is enacted, that where several persons shall be made defendants in any personal action, and any one or more of them shall have a *nolle prosequi* entered as to him or them, every such person shall have judgment for, and recover his reasonable costs. And where any *nolle prosequi* shall have been entered upon any count, or as to part of any declaration, the defendant shall be entitled to and have judgment for and recover his reasonable costs in that behalf.

NOMEN GENERALISSIMUM, a most universal term, as land.

Nomen dicitur à noscendo, quia notitiam facit. 6 Co. 65.—(A name is called from the word to know, because it makes recognition.)

Nomen ducis mergitur nomine regis. Jenk. Cent. 225.—(The name of duke is merged in the name of king.)

Nomen est quasi rei notamen. 11 Co. 20.—(A name is, as it were, the note of a thing.)

Nomen non sufficit si res non sit de jure aut de facto. 4 Co. 107.—(The name is not sufficient if the thing be not by law or by fact.)

NOMENCLATOR, one who calls things or persons by their proper names; one who opens the etymologies of names, interpreted *Thesaurarius. Spelm.*

NOMINA VILLARUM, an account of the names of all the villages and the possessors thereof, in each county, drawn up by several sheriffs, 9 Edward II., and returned by them into the Exchequer, where it is still preserved.

Nomina si nescis perit cognitio rerum. Et nomina si perdas, certè distinctio rerum perditur. Co. Lit. 86.—(If you know not the names of things, the knowledge of things themselves perishes. And, if you lose the names, the distinction of the things is certainly lost.)

Nomina sunt notæ rerum. 11 Co. 20.—(Names are the notes of things.)

Nomina sunt mutabilia, res autem immobiles. 6 Co. 66.—(Names are mutable, but things immutable.)

Nomina sunt symbola rerum. Godb.—(Names are the symbols of things.)

NOMINAL PARTNER, one who has not any actual interest in the trade or business, or its profits; but, by allowing his name to be used, holds himself out to the world, as apparently having an interest.

"If a person will lend his name as a partner," said Lord Chief Justice Eyre (*Waugh v. Carver*, 2 H. Bl. 235), "he becomes, as against all the rest of the world, a partner, not upon the grounds of the real transaction between them, but upon principles of general policy, to prevent the frauds to which others would be liable, if they were to suppose they lent their money upon the apparent credit of three or four persons, when in fact they lent it only to two of them, to whom, without the others, they would have lent nothing."

However, to render a person responsible as a nominal partner, positive consent, or at least a knowledge by him of the assumption of his name, from which his acquiescence will be inferred, must be shown. *See on Partnership*, 12, 24, 25, 80, 129; *Story on Partnership*, 96, 112, 351.

NOMINATION, the act of mentioning by name; the power of appointing especially, by virtue of some manor or otherwise, a clerk to a patron of a benefice, by him to be presented to the ordinary. A nominator must appoint his clerk within six months after avoidance; if he do not, and the patron presents his clerk before the bishop has taken any benefit of the lapse, he is obliged to admit such clerk. *Plowd.* 529.

NOMINE PÆNÆ, a penalty incurred for not paying rent, &c., at the day appointed in the lease or agreement for payment thereof.

Strictly speaking, no forfeiture can be called *nomine pænæ*, unless it be for the non-payment of rent; but it is not unusual to mention stipulated penalties for other things, as for the non-payment of a collateral sum, for ploughing up ancient meadow, or above a certain number of acres in one year, for changing the character of particular premises, or the like, by the general name of *nomine pænæ*.

Where a penalty is annexed to the non-payment of rent, and distress given for it, a demand must be made, and the penalty is waived by an acceptance of the rent. *Corp.* 247; *Woodf. Land. and Tent.* 291.

NOMINEE, a person nominated or appointed to any place or office.

NOMOCANON [*νόμος*, Gk., law, and *κανών*, a rule], a collection of canons and imperial laws relative or conformable thereto.

The first nomocanon was made by Johannes Scholasticus in 554. Photius, patriarch of Constantinople, in 883, compiled another nomocanon, or collation of the civil laws with the canons; this is the most celebrated. Balsamon wrote a commentary upon it in 1180.

Also, a collection of the ancient canons of the apostles, councils, and fathers, without any regard to imperial constitutions. Such is the nomocanon by M. Cotelier. *Encyc. Lond.*

NOMOGRAPHER [*νόμος*, Gk., law, and *γράφω*, to write], one who writes on the subject of laws.

NOMOGRAPHY, a treatise or description of laws.

NOMOTHESY [*νόμος*, Gk., law, and *τίθημι*, to put], the institution of laws; the publication of laws.

NOMOTHEA, a lawgiver.

NOMOTHETICAL, legislative.

NON, not. It is never used separately, but sometimes prefixed to words with a negative power.

NON-ABILITY, inability; an exception against a person.

Non accipi debent verba in demonstrationem falsam quæ competant in limitationem veram.

Bacon.—(Words which agree in a true meaning, ought not be received in a false sense.)

Non alio modo puniatur aliquis, quam secundum quod se habet condemnatio. 3 Inst. 217.—

(A person may not be punished differently than according to what the sentence enjoins.)

NONÆ ET DECIMÆ, payments made to the church by those who were tenants of church farms. The first was a rent or duty for things belonging to husbandry, the second was claimed in right of the church.

NON-ACCEPTANCE, the refusal of acceptance.

NON-ACCESS, when a husband could not, in the course of nature, by reason of his absence, have been the father of his wife's child, the child is by law a bastard.

Access, or sexual intercourse, is certainly to be presumed during lawful wedlock; but this presumption may be encountered by

proof of any circumstances which satisfactorily show that this sexual intercourse did not take place within such a time, that the husband could, according to the laws of nature, be the father; and the proof of these circumstances must be regulated by the same principles as are applicable to the establishment of any other fact. The mother of the child whose legitimacy is questioned, will not be allowed to prove the non-access of her husband, not even after her husband's death. 2 Phil. on Evid. 248.

NON-ACT, a forbearance from action; the contrary to act.

NON-ADMISSION, the refusal of admission.

NON-AGE, minority.

NONAGIUM or **NONAGE**, a ninth part of moveables which was paid to the clergy on the death of persons in their parish, and claimed on pretence of being distributed to pious uses. *Blount.*

NON-APPEARANCE, the omission of timely and proper appearance; a failure of appearance.

NON ASSUMPSIT (he has not promised), a plea by way of traverse, which occurs in the action of *assumpsit* or promises.

The plea of *non assumpsit* operates as a denial in point of fact of the existence of any express promise to the effect alleged in the declaration, or of the matters of fact from which the promise alleged would be implied by law. But under this plea the defendant cannot insist that, though a contract was made as alleged, it is invalid in point of law, for this must form the subject of a special allegation, showing the circumstances out of which the illegality is supposed to arise. *Step. Plead.* 183.

In *assumpsit*, the new rules of Hilary Term, 4 Wm. IV., order that, 1. "In all actions of *assumpsit* (except in bills of exchange and promissory notes) the plea of *non assumpsit* (which, by the way, is no longer properly called the general issue) shall operate only as a denial in fact of the express contract or promise alleged, or of the matters of fact from which the contract or promise alleged may be implied by law, e.g., in an action on a warranty, the plea will operate as a denial of the fact of the warranty having been given upon the alleged consideration, and not of the breach; and in an action on a policy of assurance of the subscription to the alleged policy by the defendant, but not of the interest, of the commencement of the risk, of the loss, or of the alleged compliance with warranties. In actions against carriers and other bailees for not delivering or not keeping goods safe, or not returning them on request, and in actions against agents for not accounting, the plea will operate as a denial of any express contract to the effect alleged in the declaration, and of such bailment or employment as would raise a promise in law to the effect alleged, but not of the breach. In an action of *indebitatus assumpsit* for goods sold and delivered, the plea of *non assumpsit* will

operate as a denial of the sale and delivery in point of fact; in the like action for money had and received, it will operate as a denial both of the receipt of the money and the existence of those facts which makes such receipt by the defendant a receipt for the use of the plaintiff."

2. "In actions upon bills of exchange and promissory notes, the plea of *non assumpsit* shall be inadmissible. In such actions, therefore, a plea in denial must traverse some matter of fact; *e.g.*, the drawing, or making, or indorsing, or accepting, or presenting a notice of the dishonour of the bill or note."

3. "In every species of *assumpsit*, all matters in confession and avoidance, including not only those by way of discharge, but those which show the transaction to be either void or voidable in point of law, on the ground of fraud or otherwise, shall be specially pleaded, *e.g.*, infancy, coverture, release, payment, performance, illegality of consideration, either by statute or common law, drawing, indorsing, accepting, &c., bills or notes by way of accommodation, set-off, mutual credit, unseaworthiness, misrepresentation, concealment, deviation, and various other defences must be pleaded."

NON ASSUMPSIT INFRA SEX ANNOS (he has not promised within six years).

NON ATTENDANCE, the not giving personal attendance.

NON ATTENTION, the want of proper and timely attention.

NON CEPIT (he took not), a plea by way of traverse, which occurs in the action of replevin.

This plea applies to the case where the defendant has not, in fact, taken the cattle or goods, or where he did not take them or have them, in the place mentioned in the declaration; the place being a material point in this action.

NON CLAIM, the omission or neglect of him that ought to challenge his right within a time limited, as within a year and a day, but now no continual or other claim shall preserve any right of making an entry or distress, or of bringing an action. 3 & 4 Wm. IV., c. 27, § 11.

NON COMPOS MENTIS, said of a person who is not of sound memory and understanding. See **IDIOTS**, and **MENTAL ALIENATION**.

NON CON, an abbreviation of non-conformist: which see.

Non concedantur citationes priusquam exprimat super qua ne fieri debet citatio. 12 Co. 47. — (Summonses should not be granted before it is expressed under the circumstance whether the summons ought to be made.)

NON CONCESSIT (he did not grant), a plea resorted to by a stranger to a deed, because estoppels do not hold with respect to strangers.

This plea brings into issue the title of the grantor as well as the operation of the deed.

NON CONFORMIST, one who refuses to

comply with others: one who refuses to join in the established worship.

Non conformists are of two sorts: 1. such as absent themselves from divine worship in the established church through total irreligion, and attend the service of no other persuasion; 2. such as offend through a mistaken or perverse zeal. See **DISSENTER**.

NON CONFORMITY, refusal of compliance.

NON CONSTAT (it is not plain).

NON CULPABILIS, sometimes abbreviated **NON CUL** (not guilty).

NON DAMNIFICATUS (not injured), a plea in an action of debt on an indemnity bond, or bond conditioned "to keep the plaintiff harmless and indemnified, &c."

This is in the nature of a plea of performance; being used where the defendant means to allege that the plaintiff has been kept harmless and indemnified, according to the tenor of the condition; and it is pleaded in general terms without showing the particular manner of the indemnification. *Step. Plead.* 378.

Non debent mulieribus assignari castra in dotem quæ fuerunt virorum suorum et quæ de guerra existunt, vel etiam homagia et servicia aliquorum de guerra existentia. Co. Lit. 31. — (Tents, which belong to husbands, and which are for war, ought not to be assigned to wives as dower, or even homage or services of those things belonging to war.)

Non debet adduci exceptio ejus rei cujus petitur dissolutio. Jenk. Cent. 37. — (An exception of the thing, whose abolition is sought, ought not to be adduced.)

Non debet dici tendere in præjudicium ecclesiasticæ libertatis quod pro rege et republicâ necessarium videtur. 2 Inst. 625. — (That which seems necessary for the king and the state ought not to be said to tend to the prejudice of spiritual liberty.)

NON DECIMANDO, a custom or prescription to be discharged of all tithes, &c.

Non decipitur qui scit se decipi. 5 Co. 60. — (He is not deceived who knows himself to be deceived.)

Non definitur in jure quid sit conatus. 6 Co. 42. — (What an attempt is, is not defined in law.)

Non differunt quæ concordant re, tametsi non in verbis iisdem. Jenk. Cent. 70. — (Those things that agree in substance, though not in the same words, do not differ.)

NON DEMISIT (he demised not), a plea resorted to where a plaintiff declares upon a demise without stating the indenture in an action of debt for rent.

Also, a plea in bar, in replevin to an avowry for arrears of rent, that the avowant did not demise.

NON DETINET, a plea by way of traverse, which occurs in the action of detinue.

This plea alleges that the defendant does not detain "the said goods in the said declaration specified, &c." It operates accordingly as a denial of the detention of the goods in question by the defendant. But,

under this form of plea, the defendant cannot deny that the goods were the plaintiff's property. *Step. Plead.* 177.

NON DISTRINGENDO, a writ not to detain. *Obsolete.*

Non efficit affectus nisi sequatur effectus. Sed in atrocioribus delictis punitur affectus, licet non sequatur effectus. 2 Rol. Rep. 89.—(The intention fulfils nothing unless an effect follow. But in the deeper delinquencies, the intention is punished, although an effect follow not.)

NONES, days so called because they reckoned nine days from them to the Ides.

The seventh day of March, May, July, and October, and the fifth day of all other months. *Kenn. Antiq.* 92.

Non est arctius vinculum inter homines quam iuramentum. Jenk. Cent. 126.—(There is no tighter link than an oath among mankind.)

Non est consonum rationi, quod cognitio accessorii in curia christianitatis impediatur, ubi cognitio causæ principalis ad forum ecclesiasticum noscitur pertinere. 12 Co. 65.—(It is unreasonable that the cognizance of an accessory should be impeded in an ecclesiastical court, when the cognizance of the principal cause is admitted to appertain to an ecclesiastical court.)

Non est disputandum contra principia negantem. Co. Lit. 343.—(We cannot dispute against a man denying principles.)

NON EST FACTUM, a plea by way of traverse, which occurs in debt on bond or other specialty, and also in covenant.

This plea denies that the deed mentioned in the declaration is the defendant's deed; under this the defendant may contend at the trial that the deed was never executed in point of fact. But he cannot, under this plea, deny its validity in point of law, for this should form the subject of a special allegation, showing the circumstance out of which the illegality is supposed to arise. None but the party, his heirs, executors, &c., can plead *non est factum*, for a stranger to a deed cannot; he must say nothing passed by the deed.

By the rules of Hilary Term, 4 Wm. IV., "In debt on specialty or covenant, the plea of *non est factum* shall operate as a denial of the execution of the deed in point of fact only, and all other defences shall be specially pleaded, including matters which make the deed absolutely void, as well as those which make it voidable."

NON EST INVENTUS, a sheriff's return to a writ when the defendant is not to be found in his bailiwick.

Non est juri consonum quod quis super iis quorum cognitio ad nos pertinet, curia christianitatis trahatur in placitum. 12 Co. 44.—(It is unreasonable that any one should be drawn to plead in an ecclesiastical court to those things, the cognizance of which belongs to us.)

Non est justum aliquem antenatum post mortem facere bastardum, qui toto tempore vitæ suc-

pro legitimo habebatur. Co. Lit. 244.—(It is not just to make an elder born a bastard after his death, who, during his lifetime, was accounted legitimate.)

Non est recedendum a communi observantia. 2 Co. 74.—(There is no departing from common observance.)

Non est regula quin fallat. Office of Executor, 212.—(There is no rule but what may fail.)

Non facias malum, ut inde veniat bonum. 11 Co. 74.—(You are not to do evil that thence good may arise.)

Non impedit clausula derogatoria quo minus ab eadem potestate res dissolvantur quod constituentur. Bacon.—(A derogatory clause does not impede the less when things are dissolved by the same power by which they are created.)

Non in legendo sed in intelligendo leges consistunt. 8 Co. 167.—(The laws consist not in being read, but in being understood.)

Non jus sed seisinam facit stipitem. Fleta, l. vi.—(Not right, but seisin, makes a stock.)

Non licet quod dispendio licet. Co. Lit. 127.—(That which is permitted at a loss is not permitted.)

NON FEASANCE, an offence of omission of what ought to be done.

NON IMPLACITANDO ALIQUEM DE LIBERO TENEMENTO SINE BREVI, a writ to prohibit bailiffs, &c., from distraining or impleading any man touching his freehold without the king's writ. *Reg. Orig.* 171. *Obsolete.*

NON INTROMITTENDO, QUANDO BREVE PRÆCIPE IN CAPITE SUBDOLE IMPETRATUR, a writ addressed to the justices of the bench, or in eyre, commanding them not to give one who had, under colour of entitling the king to land, &c., as holding of him, *in capite*, deceitfully obtained the writ called *præcipe in capite*, any benefit thereof, but to put him to his writ of right. *Reg. Orig.* 4.

NON JOINDER, a plea in abatement for the non joinder of a person as co-defendant; it must state that the person who is the subject of the plea resides within the jurisdiction, and his residence must be stated with convenient certainty in an affidavit verifying the plea.

No action or suit commenced to recover damages for loss or injury to any parcel, package, or person, shall abate, for the want of joining any co-proprietor, in any mail, stage coach, or other public conveyance, by land, for hire. 1 Wm. IV., c. 68, § 5.

NON-JURING [*non* and *juro*, Lat., to swear], said of those who will not swear allegiance to the Hanoverian family. *Encyc. Lond.*

NON-JUROR, one who, conceiving James II. unjustly deposed, refuses to swear allegiance to those who have succeeded him.

NON LIQUET (it does not appear), a verdict given by a jury, when a matter is to be deferred to another day of trial.

The same phrase was used by the Romans;

after hearing a cause, such of the Judges as thought it not sufficiently clear to pronounce upon, cast a ballot into the urn with the two letters N. L. for *non liquet*.

NON MERCHANDIZANDO VICTUALIA, an ancient writ addressed to justices of assize, to enquire whether the magistrates of such a town sell victuals is gross or by retail, during the time of their being in office, which is contrary to an obsolete statute; and to punish them if they do. *Reg. Orig.* 184.

NON MOLESTANDO, a writ that lay for a person who was molested contrary to the king's protection granted to him. *Ibid.* 184.

Non observata forma infertur adnullatio actus. 5 Co. Ecc. L. 98.—(When form is not observed, a failure of the action ensues.)

NON OBSTANTE (notwithstanding), a licence from the Crown to do that which could not be lawfully done without it. Also, a clause frequent in statutes and letters patent, importing a licence from the Crown to do a thing, which by common law might be done, but being restrained by act of Parliament could not be done without such licence. *Plowd.* 501.

But the doctrine of *non obstantes*, which sets the prerogative above the laws, was effectually demolished by the bill of rights at the Revolution; for it is enacted by 1 W. & M. 2, c. 2, that no dispensation, by *non obstante* of or to any statute, or any part thereof, shall be allowed, but that the same shall be held void and of none effect, except a dispensation be allowed in such statute.

NON OBSTANTE VEREDICTO, judgment.

See JUDGMENT NON OBSTANTE VEREDICTO.

Non officit conatus nisi sequatur effectus. 11 Co. 98.—(An attempt does not hinder unless a consequence follow.)

NON OMITTAS, the clause "that you omit not by reason of any liberty in your bailiwick," which is usually inserted in all processes addressed to sheriffs, which makes the liberty *pro hac vice*, parcel of the sheriff's bailiwick, and the sheriff must enter and execute the writ within the liberty.

If a writ do not contain a *non omittas* clause, the sheriff directs his mandate either to the lord or the bailiff of the liberty, by whom the writ is executed and returned.

Non omnium quæ a majoribus nostris constituta sunt ratio reddi potest. 4 Co. 78.—(A reason cannot be given for all the things which were instituted by our ancestors.)

Non pertinet ad judicem secularem cognoscere de iis quæ sunt merè spiritualia annexa. 2 Inst. 488.—(It belongs not to the secular Judge to take cognizance of things which are merely spiritual.)

NON-PLEVIN, default in not replevying land in due time.

NON PONENDIS IN ASSISIS ET JURATIS, a writ formerly granted for freeing and discharging persons from serving on assizes and juries. *F. N. B.* 165.

Non potest adduci exceptio ejus rei cujus petitur dissolutio. Bac. Max. 22.—(A plea of

the same thing, whose defect is sought, cannot be made.)

Where the legality of some proceeding is the subject in dispute between two parties, he who maintains its legality, and seeks to take advantage of it, cannot rely upon the proceeding itself as a bar to the adverse party; for otherwise the person aggrieved would be clearly without redress.

Non potest rex gratiam facere cum injuriæ et damno aliorum; quod autem alienum est dare non potest per suam gratiam. 3 Inst. 236.—(The king cannot confer a favour at the expense or to the injury of others; for what is the property of another, he cannot give as his own favour.)

Non potest rex subditum renitentem onerare impositionibus. 2 Inst. 61.—(The king cannot load a subject resisting with impositions.)

Non præstat impedimentum quod de jure non sortitur effectum. Jenk. Cent. 162.—(An impediment which does not by law produce a consequence, avails not.)

NON PROCEDENDO AD ASSISAM REGE INCONSULTO, a writ to stop the trial of a cause appertaining to one who is in the royal service, &c., until the Sovereign's pleasure be further known. *Reg. Orig.* 220.

NON PROS, abbrev. for *non prosequitur*. See JUDGMENT OF NON PROS.

Non quod dictum est, sed quod factum est inspicitur. Co. Lit. 36.—(Not what is said but what is done is to be regarded.)

Non refert an quis assensum suum præfert verbis, an rebus ipsis et factis. 10 Co. 52.—(It matters not whether a man gives his assent by his words, or by his acts and deeds.)

Non refert quid ex æquipollentibus fiat. 5 Co. 122.—(That which may be gathered from words of tantamount meaning is of no consequence.)

Non refert quid notum sit judici, si notum non sit in formâ judicii. 3 Buls. 115.—(It matters not what is known to the Judge, if it be not known in a judicial form.)

Non refert verbis an factis fit revocatio. Cro. Car. 49.—(It matters not whether a revocation is made by words or deeds.)

NON RESIDENCE, failure of residence.

NON RESIDENTIA PRO CLERICO REGIS, a writ addressed to the bishop, charging him not to molest a clerk employed in the royal service, by reason of his non-residence; in which case he is to be discharged. *Reg. Orig.* 58.

Non respondebit minor; nisi in causâ dotis, et hoc pro favore doti. 4 Co. 71.—(A minor shall not answer unless in a case of dower, and this in favour of dower.)

NON SANE MEMORY, a person labouring under mental alienation: which see.

NONSENSE. Where a matter set forth is grammatically right, but absurd in the sense and unintelligible, some words cannot be rejected to make sense of the rest, but must be taken as they are; for there is nothing so absurd but what, by rejecting, may be

made sense; but where a matter is nonsense, by being contradictory and repugnant to somewhat precedent, there the precedent matter which is sense shall not be defeated by the repugnancy which follows; but that which is contradictory shall be rejected.

As in ejectment, where the declaration is of a demise the *second* of January, and that the defendant afterwards, *scilicet*, the *first* of January, ejected him, here the *scilicet* may be rejected, as being contrary to what went before. 1 *Salk*, 324.

NON SEQUITUR (it does not follow).

Non solum quid licet, sed quid est conveniens considerandum; quia nihil quod inconueniens est licitem. Co. Lit. 66.—(Not only what is permitted, but what is proper, is to be considered; because nothing which is improper is legal.)

NON SOLVENCY, inability to pay.

NON SOLVENDO PECUNIAM AD QUAM CLERICUS MULCTATUR PRO NON RESIDENTIA, a writ prohibiting an ordinary to take a pecuniary mulct, imposed on a clerk of the Sovereign for non-residence. *Reg. Writ*, 59.

NONSUIT [*non est prosecutus*]. See JUDGMENT AS IN CASE OF A NONSUIT.

NON SUM INFORMATUS, a formal answer made of course by an attorney, that he is not instructed or informed to say anything material in defence of his client; by which he is deemed to leave it undefended, and so judgment passes against his client. See JUDGMENT BY DEFAULT.

NON SUMMONS, *wager of law* of, the mode in which a tenant or defendant in a real action pleaded, when the summons which followed the original was not served within the proper time. 31 *Eliz.*, c. 3, § 2; 2 *Saund.* 45, c.

Non sunt longa ubi nihil est quod demere possit. Vaugh. 138.—(There is no prolixity where there is nothing which can abate.)

Non temerè credere, est nervus sapientiæ. 5 Co. 114.—(Not to believe rashly is the nerve of wisdom.)

NON TENUIT, a plea in bar, in replevin, to avowry for arrears of rent, that the plaintiff did not hold in manner and form, as the avowry alleges.

NON TENURE, a plea in bar to a real action, by saying that he (the defendant) held not the land mentioned in the plaintiff's count or declaration, or at least some part thereof. It is either general, where one denied ever to have been tenant of the land in question, and special, where it is alleged that he was not tenant on the day whereon the writ was purchased. 1 *Mod.* 181.

The form of pleading a special non-tenure is to be found in *Co. Eccl.* 620, a.

NON TERMINUS, the vacation between term and term, formerly called the time or days of the king's peace.

NON USER, neglect of official duty.

Non valebit felonis generatio, nec ad hæreditatem paternam vel maternam; si autem ante feloniam generationem fecerit, talis generatio

succedit in hæreditate patris vel matris à quo non fuerit feloniam perpetrata. 3 Co. 41.—(The offspring of a felon cannot succeed either to a maternal or paternal inheritance; but if he had offspring before the felony, such offspring may succeed to the inheritance of the father or mother by whom the felony was not committed.)

This is not now the rule, for descendants can trace through a felon ancestor.

Non valet confirmatio, nisi ille, qui confirmat, sit in possessione rei vel juris unde fieri debet confirmatio; et eodem modo, nisi ille cui confirmatio fit, sit in possessione. Co. Lit. 295.

—(Confirmation is not valid unless he who confirms is either in possession of the thing itself, or of the right of which confirmation is to be made, and, in like manner, unless he to whom confirmation is made is in possession.)

Non valet impedimentum quod de jure non sortitur effectum. 4 Co. 31.—(An impediment which does not destroy the force of law is of no consequence.)

Non videtur consensum retinuisse si quis ex præscripto minantis aliquid immutavit. Bacon.—(He does not appear to have retained consent, if he have changed any thing through the menaces of a party threatening.)

NOOK OF LAND, [*nocata terræ*], twelve acres and a half, *sed qu.*

NORROY [*nord* and *roy*, Fr.], the title of the third of the three kings at arms, or provincial heralds. See **HERALD**.

NORTHAMPTON, *Statute of*, 2 Edw. III.

Noscitur ex socio, qui non cognoscitur ex se. Moor 817.—(He who cannot be known from himself may be known from his associate.)

NOTARIAL, taken by a notary.

NOTARY or **NOTARY PUBLIC** [*notaire*, Fr., from *notarius*, Lat.], an officer whose business it is to take notes of anything which may concern the public; he publicly attests deeds or writings to make them authentic in another country; but principally in mercantile affairs, as to make protests of bills of exchange, &c. He must serve an apprenticeship of seven years, and be admitted in the civil law courts. He cannot permit another to act in his name, and in London he must be free of the Scriveners' Company. See 41 *Geo. III.*, c. 79; 3 & 4 *Wm. IV.*, c. 70.

NOTE A BILL, when a public notary goes as a witness, or takes notice that a person will not accept or pay a bill of exchange, &c. See **NOTARY**.

NOTE OF A FINE, a brief of a fine made by the chirographer before it was engrossed. Abolished by 3 & 4 *Wm. IV.*, c. 74.

NOTE OF HAND, a promissory note.

NOTE PROMISSORY. See **PROMISSORY NOTE**.

NOTES, memoranda made by a Judge on a trial, as to the evidence adduced, and the points reserved, &c. A copy of the Judge's notes is obtained from his clerk when a new trial is sought, to be used on the motion.

NOT GUILTY, a plea by way of traverse which

occurs in trespass, and trespass on the case *ex delicto*.

This plea in trespass evidently amounts to a denial of the trespasses alleged, and no more. In trespass on the case it operates as a denial of the breach of duty, or wrongful act alleged to have been committed by the defendants. *R. H., 4 Wm. IV.*

The plea of not guilty, in criminal proceedings, is the proper form wherever a prisoner means either to deny or to justify the charge in the indictment, in which case a special plea is generally improper.

Thus on an indictment for murder, a man cannot plead that it was in his own defence against a robber on the highway, or a burglar, but he must plead the general issue, not guilty, and give this special matter in evidence. For, besides that these pleas do in effect amount to the general issue, since, if true, the prisoner is most clearly not guilty, as the facts in treason are laid to be done *proditorie et contra ligeantiam sue delictum*, and in felony, that the killing was done *felonice*; these charges of a traitorous or felonious intent are the points and very gist of the indictment, and must be answered directly by the general negative, not guilty, the effect of which is, that on the one hand it puts the prosecutor to the proof of every material fact alleged in the indictment or information, and on the other it entitles the defendant to avail himself of any defensive circumstances as amply as if he had pleaded them in a specific form. So that this is, upon all accounts, the most advantageous plea for a prisoner.

By the plea of not guilty, the prisoner puts himself upon the trial by jury; and when the record is afterwards made up (for the proceedings ought regularly to be recorded, according to the analogy of the practice in civil cases), the prosecutor on the part of the crown adds the *similiter* (as it is called), by the words that he "doth the like." But even before this formal entry, the *similiter* is supposed to be added by the prosecutor, immediately on the plea of not guilty being pleaded by the defendant, which brings the parties to issue, so that a trial may ensue. *4 Step. Com. 407.*

NOTE OF ALLOWANCE. By general rule of all the courts of Hilary Term, 4 Wm. IV., r. 9, "no writ of error shall be a *superseas* of execution until the service of the notice of the allowance thereof, containing a statement of some particular ground of error intended to be argued: provided, that if the error stated in such notice shall appear to be frivolous, the court or a Judge, upon summons, may order execution to issue."

This note of allowance may be served before the plaintiff is entitled to sign final judgment, and it is usual to serve it at the time of taxing the costs, in order to prevent the other party from suing out execution. *Chit. Arch. Prac. 357.*

NOTHUS [*νόθος*, Gk.], a bastard or a person of spurious birth.

NOTICE, the making something known that a person was or might be ignorant of. It is either *actual*, which is a direct notification, either verbal or written, to the person to be affected thereby; or *constructive*, which in its nature is no more than evidence of notice, the presumptions of which are so violent, that the court will not allow of its being even controverted. It is difficult to say what will amount to a constructive notice. Notice to a person's counsel, attorney, or agent, is notice to him; and a person executing, not merely attesting, a deed, in which there are recitals of other deeds, will be held to have constructive notice of the contents of such recited deeds. *3 Sugd. Vend. & Pur. 450.*

NOTICE TO ADMIT. By rule of Hilary Term, 4 Wm. IV., r. 20, made in pursuance of 3 & 4 Wm. IV., c. 42, § 15, either party after plea pleaded and a reasonable time before trial, may give notice to the other, either in town or country, in the form thereto annexed, or to the like effect of his intention to adduce in evidence certain written or printed documents; and unless the adverse party shall consent, by indorsement on such notice, within forty-eight hours to make the admission specified, the party requiring such admission may call on the party required by summons to show cause before a Judge why he should not consent to such admission, or, in case of refusal, be subject to pay the costs of proof. And, unless the party required shall expressly consent to make such admission, the Judge shall (if he think the application reasonable) make an order that the costs of proving any document specified in the notice (which shall be proved at the trial to the satisfaction of the Judge or other presiding officer, certified by his endorsement thereon) shall be paid by the party so required, whatever may be the result of the cause. Provided, that if the Judge shall think the application unreasonable, he shall endorse the summons accordingly. Provided also, that the Judge may give such time for enquiry or examination of the documents intended to be offered in evidence, and give such directions for the inspection and examination, and impose such terms upon the party requiring the admission as he shall think fit. If the party required shall consent to the admission, the Judge shall order the same to be made. No costs of proving any written or printed document shall be allowed to any party who shall have adduced the same in evidence on any trial, unless he shall have given such notice as aforesaid, and the adverse party shall have refused or neglected to make such admission, or the Judge shall have endorsed upon the summons that he does not think it reasonable to require it.

It is not compulsory in any case, on the party intending to produce documents in evidence, to adopt the above course, and when it is deemed disadvantageous to inform the opposite party of the nature or contents of the documents proposed to be offered at the trial, the premature disclosure

may be avoided; but, in that event, the costs of proving the document fall inevitably on the party producing it in evidence. *Prac. at Cham.* 307.

NOTICE OF FILING DECLARATION.

When a declaration is filed with the master on an appearance (*see. stat.*), notice of its being so filed must be delivered or left at the last or most usual place of abode of defendant, if known, and to all the defendants, if more than one; but it need not be personally served. Where the residence is unknown, notice of declaration may be posted in the Master's office, but not without previous leave of the court. The declaration is deemed filed only from the service of the notice. *Chit. Arch. Prac.* 141.

NOTICE OF DISHONOR. If the drawer of a bill of exchange have not reasonable notice of the drawee's refusal to accept or pay, he is exonerated, unless he have no effects in the hands of the drawee at the time of drawing, while the bill is running or becomes due, when he is not entitled to notice. In the case of non-payment of a bill of exchange, the holder must give notice thereof to all the antecedent parties, from whom he means to require payment of the bill, otherwise they will be discharged.

NOTICE OF INQUIRY. The plaintiff must give a written notice of executing a writ of inquiry to the defendant or his attorney. Notice of trial and inquiry, and of continuance of inquiry, must be given in town; but countermand of notice of trial or inquiry may be given either in town or country, unless otherwise ordered by the court or a Judge.

If the writ is to be executed in London or Middlesex, and the defendant lives within forty computed miles of London, eight days' notice must be given, which must be computed exclusive of the day of giving the notice, and inclusive of the day of executing the inquiry. But fourteen days' notice is required if the defendant reside at a greater distance. If the writ is to be executed in any other county, eight days' notice is sufficient. In replevin there should be fifteen days' notice of inquiry, by 17 Car. II., c. 7, § 2. If the writ is to be executed before the Justice or Judge of assize, the notice is given for the sittings or assizes generally, in the same manner as notices of trial, and it may be continued or countermanded in the same manner as a notice of trial. *Chit. Arch. Prac.* 714.

NOTICE TO PLEAD. This is necessary in all cases before the plaintiff can sign judgment for want of a plea. It is usually endorsed on the declaration when delivered, but may be given on a separate paper; when the declaration is filed, it is given in the notice of declaration.

The notice must be to plead within four days, if the venue be laid in London or Middlesex, and the defendant reside within twenty miles of London; or within eight days, if

the venue be laid in any other county, or the defendant reside above twenty miles from London. In actions against attornies, the defendant has only four days to plead after delivery of a copy of the declaration, wherever the venue is laid, and whether he reside within twenty miles of London or not. *Chit. Arch. Prac.* 152.

NOTICE TO PRODUCE. If the adverse party be in possession of any written instrument, which would be evidence for you, if produced, a notice to produce it at the trial may be served either upon him, his attorney, or agent. The notice must specify the instrument with a particularity sufficient to inform the opposite party what he is called upon to produce. It must be served a reasonable time before trial, so as to enable the party served to make an effectual search, and produce the same at the proper time.

It is optional with the party upon whom the notice has been served, to produce the instrument required or not. If he do not, then, upon proving the service of the notice, it will be permitted to prove the contents of the instrument by a copy or other secondary evidence, in the same manner as if it had been destroyed or lost. *Chit. Arch. Prac.* 230.

NOTICE TO QUIT. Where there is a tenancy from year to year subsisting, it can only be put an end to by a notice to quit, which may be given by either party, and must be given six months previously to the expiration of the current year of tenancy, so as to expire at the same period of the year in which the tenant entered upon the premises. This rule is to be invariably followed in all cases, except where there is some special agreement between the parties to a different effect, or it would seem where a particular local custom intervenes.

Where the relation of landlord and tenant does not exist, a notice to quit is out of the question. A tenant of a house from year to year, not under any agreement to repair, may quit, without previous notice to his landlord, on the premises becoming unsafe and useless from want of repairs; and such tenant is not liable, in an action for use and occupation, for any rent after the occupation has ceased to be beneficial. Where the term of a lease is to end on a precise day, there is no occasion for a notice to quit previously to bringing an action of ejectment, because both parties are equally apprised of the determination of the term. If a tenant continue in possession for a year after his lease has expired, or rent has been received, a notice must be given before he can be ejected; for where, by consent of both parties, a tenant continues in possession after the expiration of his term, the law implies a tacit renovation of the contract, and in such cases the tenant holds upon the former terms. No fresh notice, however, is necessary where a tenant, after having given a notice, holds over for a year, and pays double rent, according to 11 Geo. II.,

c. 19, § 18. Where a lessee holds under a void demise, no notice is necessary; but where a lease granted by a tenant for life under a limited power of leasing, which exceeded his power, was void, and not capable of being confirmed by the remainder-man; yet the remainder-man received money as rent after the death of the tenant for life, it was held to be an admission of a tenancy from year to year, and that a notice to quit must be given before any ejectment could be brought. And though a lease be void by the Statute of Frauds as to the duration of the term, it is considered that the tenant holds under the terms of the lease in other respects, and therefore that the landlord can only put an end to the tenancy at the expiration of the year. In the case of a tenancy from year to year, so long as both parties please, if the tenant die, his personal representatives have the same interest in the land which their testator or intestate had, and are therefore entitled to the same notice to quit; for such tenancy is a chattel interest; and whatever chattel the deceased had must vest in them as his legal representatives. Where the reversion has been conveyed by the lessor during the existence of a tenancy from year to year, the tenant is entitled to a notice to quit before he can be ejected by the grantee of the reversion. Where an infant becomes entitled to the reversion of an estate, leased from year to year, he cannot eject the tenant without giving the same notice as the original lessor must have given. No notice to quit is necessary where the tenant does an act which amounts to a disavowal of the title to the lessor; as where the tenant has attorned to some other person, or answered an application for rent, by saying that his connection as tenant with the party applying has ceased. It is not necessary for a mortgagee to give a notice previously to bringing an ejectment either to the mortgagor or to a tenant who claims under a lease from the mortgagor, granted after the mortgage, without the privity of the mortgagee. And a mortgagee need not give notice to a tenant to quit, before bringing his ejectment, if he mean only to get into the receipt of the rents and profits of the estate, though the mortgage be made subsequently to the tenant's lease: but in such case he shall not be suffered to turn the tenant out of possession by the execution. A tenant from year to year, before a mortgage or grant of the reversion is entitled to a notice to quit, before he can be ejected by the mortgagee or grantee.

A parol notice to quit by a tenant under a parol lease is sufficient, but where a power is given to determine a lease on giving a notice in writing, it cannot be determined on giving a parol notice. The notice should, however, in all cases, be in writing, as being more susceptible of proof, but it should not be attested, because then no other witness can prove the accuracy of the copy but the

person who attested it, and he may perhaps not be in the way when his testimony is required.

A notice to quit, signed by one of several joint-tenants on behalf of the others, is sufficient to determine a tenancy from year to year, as to all. A notice given by a mortgagor before default, was held a good notice to determine the tenancy; and a notice given by a steward of a corporation is sufficient, without evidence that he had an authority under seal from the corporation for such purpose. A receiver appointed by the Court of Chancery, with a general authority to let the lands to tenants from year to year, has authority to determine such tenancies by a regular notice to quit. A mere agent to receive rents has no implied authority to give a notice to quit; but an agent to receive rents and let has authority to determine a tenancy. An agent ought to have authority to give such notice at the time when it begins to operate; for a subsequent recognition of the authority will not make the notice good. And a notice to quit by an agent of an agent is not sufficient, without a recognition. A notice on an under-tenant, given by the original lessor, is not good.

The notice should be clear and certain, neither ambiguous nor optional. The merely leaving a notice to quit at the tenant's house with a servant, without further proof of its having been explained to the servant, or that it came to the tenant's hands, is not sufficient.

In the ordinary case of a tenancy from year to year, there must be half a year's notice to quit, ending at that period of the year at which the tenancy commenced: and where the rent is reserved quarterly, it does not dispense with the regular half year's notice to quit required by law. Where the period of entry is doubtful, it is always safest to give a general notice to quit at the end of the year of tenancy, which shall expire after one half year from the time of service of the notice. Where premises are let from year to year, upon an agreement that either party may determine the tenancy by a quarter's notice, the notice must expire at the period of the year when the tenancy commenced.

If a landlord receive or distrain for rent due after the expiration of a notice to quit, it is a waiver of that notice, and giving a second notice to quit amounts to waiver of a notice previously given. If a landlord have given a notice to quit, and the tenant holds over, the landlord cannot waive his notice and distrain for rent subsequently accruing. If, at the end of the year (where there has been a tenancy from year to year), the landlord accept another person as his tenant in the room of the former tenant, without any surrender in writing, such acceptance shall be a dispensation of a notice to quit.

NOTICE OF TRIAL AT COMMON LAW.
When a trial is to be had in Middlesex, and

the defendant lives within forty miles of London, there must be eight days' notice of trial, exclusive of the day on which it is given, and inclusive of that on which the trial is to be had; or, where there are several defendants, if any one of them reside within forty miles of London, eight days' notice will be sufficient; but if the defendant, or all of the defendants, reside above forty miles from London, then fourteen days' notice must be given. And where a trial is to be had in London the notice of trial is similarly regulated. But if the notice be given for the adjournment day, it will be sufficient to give such notice eight days before the first day of the sittings after term, if the defendant reside above forty miles from London; and four days before the said first day, if the defendant reside within that distance.

If the trial is to be had at the assizes, ten days' notice of trial before the commission day must be given.

Where a trial is to be had before a sheriff, or a Judge of an inferior court (in pursuance of an order of the court or a Judge for that purpose, under 3 & 4 Wm. IV., c. 42, § 17), it should seem that the same time should be given by the notice as in other cases.

Short notice of trial is four days before the commission day in country causes, and two days' notice in town causes; but it is usual and respectable to give as much more as the time will admit.

Notice of trial must be given in all cases, except where a cause is made a *remanet* from one sittings to another, or put off by order of *Nisi Prius*.

By rule of all the courts, H. T., 2 Wm. IV., r. 57, notice of trial shall be given in town. It is usual to indorse it on the issue.

When notice of trial in London or Middlesex has been given, and the plaintiff is not ready to proceed, then, instead of countermanding his notice, he may continue it to the next sittings (not to the adjourned sittings), by giving a notice of trial by continuance two clear business days prior to the sittings at which the cause was to have been tried. It can be given only once in a term, and cannot be given after a countermand.

In country causes, or where the defendant resides more than forty miles from town, a countermand of notice of trial must be given six days before the time mentioned in the notice of trial, unless short notice of trial has been given. In town causes, where the defendant lives within forty miles of town, two days' notice of countermand shall be deemed sufficient.

A defendant is not bound to return an irregular notice of trial, and therefore does not waive the irregularity by retaining it. *Chit. Arch. Prac.* 205.

Notitia dicitur à noscendo; et notitia non debet claudicare. 6 Co. 29.—(Notice is called from a knowledge being had; and notice ought not to halt.)

NOTING. It is usual in cases of non-payment of bills of exchange, for London bankers, after six o'clock on the day the bill is due, to cause inland bills to be noted, which is merely the first part of the duty required by law of the notary in protesting a bill. This duty consists of three parts: 1. noting; 2. demanding; and 3. protesting; in the case of inland bills, a protest being totally useless, it follows that noting is almost equally so; and the expense usually charged stands merely upon the custom; there is neither any law nor any decision in its favour.

Although, in the case of inland bills of exchange, neither noting nor protesting is necessary, the case is widely different in the case of a dishonored foreign bill, which should certainly be taken to a notary the day it is refused acceptance or payment, and it is his business to note, demand, and protest it: and notice of this must be sent the same day to the drawer and indorsees, with a copy of the bill, if the drawer and indorsees are abroad, but merely a notice is sufficient if they are in England. Protests made in England should be stamped, otherwise they cannot be given in evidence. *55 Geo. III., c. 184.*

Nova constitutio, futuris formam imponere debet, non præteritis. 2 Inst. 292.—(A new institution ought to impose form on what is to follow, not on the past.)

NOVÆ NARRATIONES (new counts).

NOVALE, land newly ploughed and converted into tillage; and which had not been tilled within the memory of man before; also, fallow land. *Chambers.*

NOVA OBLATA. See **OBLATA**.

NOVATION, the substitution of a new debt for an old debt. *Pothier on Oblig., by Evans, n. 546.*

Novatio non præsumitur.—(A novation is not presumed.)

NOVEL ASSIGNMENT. See **NEW ASSIGNMENT**.

NOVEL DISSEISIN (recent disseisin). See **ASSISE OF NOVEL DISSEISIN**.

NOVELLÆ, those constitutions of the civil law which were made after the publication of the Theodosian code; but sometimes the Julian edition only is meant.

Novellæ or *Novellæ Constitutiones* form a part of the *Corpus Juris*. Most of them were published in Greek, and their Greek title is *Ἀποκρίσεις Ἰουστινιανου Ἀδριανου Νεαπαυ Διατάξεις*. Some of them were published in Latin, and some in both languages.

The first of these *Novellæ* of Justinian belongs to the year, A. D., 535 (Nov. 1), and the latest to the year, A. D., 565 (Nov. 137), but most of them were published between the years 535 and 539. These *Constitutiones* were published after the completion of the second edition of the Code, for the purpose of supplying what was deficient in that work. Indeed it appears that on the completion of his second edition of the Code, the emperor designed to form any new constitutions which he might publish, into a

body by themselves, so as to render a third revision of the Code unnecessary, and that he contemplated giving to this body of law the name of *Novellæ Constitutiones*. *Const. Cordi*, § 4.

It does not, however, appear that any official compilation of these new constitutions appeared in the lifetime of Justinian.

The Greek text of the *Novellæ* as we now have them, consists of 168 *Novellæ*, of which 159 belong to Justinian, and the rest to Justin the Second and to Tiberius: they are generally divided into chapters.

There is a Latin epitome of these *Novellæ* by Julian, a teacher of law at Constantinople, which contains 125 *Novellæ*. The Epitome was probably made in the time of Justinian, and the author was probably Antecessor at Constantinople.

There is also another collection of 134 *Novellæ*, in a Latin version made from the Greek text. This collection is generally called *Liber Authenticorum*: the compiler and the time of the compilation are unknown.

This collection has been made independently of the Greek compilation. It is divided into nine *collationes*, and the *collationes* are divided into *tituli*.

The most complete work on the history of the *Novellæ* is by Biener, *Geschichte der Novellen*. See also *Beytrag Zu Litterar-Geschichte des Novellen-Aussuys Von Julian, Von Haubold, Zeitschrift, &c., in. Smith's Dict. of Antiq.*

NUCES COLLIGERE (to collect nuts).

This was formerly one of the works or services imposed by lords upon their inferior tenants. *Par. Antiq.* 495.

NUDE CONTRACT, one made without any consideration, upon which no action will lie, in conformity to the maxim *ex nudo pacto non oritur actio*.

NUDE MATTER, a bare allegation of a thing done.

NUDUM PACTUM. See **NUDE CONTRACT**.

NUISANCE or **NUSANCE** [*nuire*, Fr., to hurt], something noxious or offensive.

It is of two kinds: (1) private, (2) public.

1. *Private*. It is a principle that every man should so use his own property as not to injure another; and if he act otherwise he subjects himself to an action. An action lies as well against him who continues a nuisance as against him who originally erected it; for though the party, having recovered in one, cannot have another action for the same, he may maintain a new action for the continuance of it.

(a) *Watercourses*. An action is maintainable for any diversion or obstruction of a water-course to which the party complaining has a right.

(b) *Commons*. The most usual acts of nuisance to commons are by injury to the soil, by digging turf, or paring the pasture, or by surcharging the common by overstocking it with cattle. In any of these cases an action is maintainable either by the lord or by the commoners.

(c) *Lights*. An action may be maintained, even by a reversioner, for obstructing the lights of an ancient messuage, or for continuing the obstruction by erecting buildings so near that the light and air cannot have access to the rooms.

The proper form of remedy for an injury sustained by a private nuisance, is an action on the case. Besides the remedy by action, the party injured may, in a very clear case, take the law into his own hands and abate the nuisance, but it is never advisable to pursue this course. An action does not lie against an agent for damage done by the negligence of those he employs; for the principal, or those actually employed, are liable. The plaintiff must show himself entitled to the thing to which the nuisance was done, at the time of the nuisance; but a seisin in law, however, is sufficient to sustain such an action.

2. *Public or common*, which are classed amongst crimes and misdemeanours, and are annoyances to all the Queen's subjects, whether by act of commission or omission; and when they annoy private individuals only, they form the subject of a civil action. But they are generally indictable only, and not actionable, for it would be unreasonable to multiply suits, by giving every man a separate right of action for what damns him in common only with the rest of his fellow subjects.

Public nuisances are:—

(a) Annoyances in the highways, bridges, and the public rivers, by rendering the same inconvenient or dangerous to pass, either positively, by actual obstructions, or negatively, by want of reparations.

(b) All those kinds of nuisances (such as offensive trades and manufactures), which, when injurious to a private person, are actionable, are, when detrimental to the public, punishable by public prosecution, and subject to fine according to the quantity of the misdemeanour.

(c) All disorderly inns, alehouses, bawdy-houses, gaming-houses, stage plays unlicensed, hoots, and stages for rope-dancers, mountebanks, and the like.

(d) All lotteries.

(e) The making and selling of fire-works and squibs, or throwing them about in any street, on account of the danger that might ensue to any thatched or timber buildings.

(f) Eaves-droppers.

(g) Common scolds.

As to the equitable jurisdiction in granting injunctions, an information lies, in cases of public nuisances, at the suit of the Attorney General, to redress the grievance by way of injunction; but the interposition of the court is principally confined to informations seeking preventive relief. In regard to private nuisances, the interference of equity, by way of injunction, goes upon the ground of restraining irreparable mischief, or of suppressing oppressive and interminable litigation, or of preventing multiplicity

of suits. There must be such an injury as from its nature is not susceptible of being adequately compensated by damages at law, or such as, from its continuance or permanent mischief, must occasion a constantly recurring grievance, which cannot be otherwise prevented but by an injunction. When the injury is irreparable, as where loss of health, loss of trade, destruction of the means of subsistence, or permanent ruin to property, may or will ensue, from the wrongful act or erection; in every such case courts of equity will interfere by injunction, in furtherance of justice and the violated rights of the party. 2 *Story's Eq. Jurisp.* 180.

NUL-TIEL AGARD (no such award), a plea traversing an award. Under this plea a defendant cannot go into objections to the award in point of law. 1 *Salk.* 72; 1 *Saund.* 327 a.

Novitas non tam utilitate prodest quam novitate perturbat. Jenk. Cent. 167.—(Novelty benefits not so much by its utility than it disturbs by its novelty.)

Novum judicium non dat novum jus, sed declarat antiquum; quia judicium est juris dictum et per judicium jus est noviter revelatum quod diu fuit velatum. 10 Co. 42.—(A new adjudication does not make a new law, but declares the old; because adjudication is the dictum of the law, and by adjudication the law is newly revealed which was for a long time hidden.)

Noxa sequitur caput. Jur. Civ.—(Blame follows the head.)

Nudum pactum est ubi nulla subest causa præter conventionem; sed ubi subest causa, fit obligatio, et parit actionem. Plow. 309.—(A naked contract is where there is no consideration to support the agreement; but where there is a consideration, an obligation exists, and produces an action.)

Nulla curia quæ recordum non habet potest imponere finem, neque aliquem mandare carceri; quia ista spectant tantummodo ad curias de recordo. 8 Co. 60.—(No court which has not a record can impose a fine, or commit any person to prison; because those powers belong only to courts of record.)

Nulla impossibilia aut inhonesta sunt præsumenda; vera autem et honesta et possibilia. Co. Lit. 78.—(Impossibilities or dishonesty are not to be presumed; but honesty, and truth, and possibility.)

Nulla virtus, nulla scientia, locum suum et dignitatem conservare potest sine modestiâ. Co. Lit. 394.—(Without modesty, no virtue, no knowledge can preserve its place and dignity.)

NUL DISSEISIN, plea of, a traverse in real actions, that there was no disseisin: it was a species of the general issue.

Nul charter, nul vende, ne nul done vault perpetualment, si le donor n'est seisié al temps de contracts de 2 droitz, sc, del droit de possession et del droit de propriété. Co. Lit. 266.—(No grant, no sale, no gift, is valid for ever, unless the donor, at the time of the contract,

is seized of two rights; namely, the right of possession, and the right of property.)

Nul grand seignior ou chivalier de nostre realm ne doit prendre chemin (d'aler hors de realm) sans nostre cunge, car issint purroit le realm remain disgarne de fort gents. 3 Inst. 179.—(No great lord or knight of our realm ought to leave the realm without our leave, for thus the realm would remain undefended by brave gentlemen.)

Nul prendra advantage de son tort demesne. 2 Inst. 713.—(No one can take advantage of his own wrong.)

Nul sans damage avera error ou attainit. Jenk. Cent. 323.—(No one shall have error or attainit without loss.)

NUL TIEL RECORD, issue of, a traverse that there is no such record. This is the proper form of issue whenever a question arises as to what has judicially taken place in a superior court of record; for the law presumes, that, if it took place, there will remain a record of the proceeding. But if the court be not of record, the issue should be directly upon the fact whether any such proceeding took place, and not upon the existence of any judicial memorial. 3 *Barn. & Cres.* 449; *Chit. Arch. Prac.* 669.

NUL TORT, plea of, a traverse in a real action that no wrong was done: it was a species of the general issue.

NULLA BONA (no goods), a return made by a sheriff to a *fi. fa.*, *distringas*, or attachment, &c., when there is no property to distrain upon.

NULLIUS FILIUS, a son of nobody, i. e., a bastard.

Nullius hominis auctoritas apud nos valere debet, ut meliora non sequeremur si quis attulerit. Co. Lit. 383.—(The authority of no man ought to prevail with us; so that we should not adopt better things, if another bring them.)

Nullum crimen majus est inobedientiâ. Jenk. Cent. 77.—(No crime is greater than disobedience.)

NULLITY, want of force or efficacy.

Nullum exemplum est idem omnibus. Co. Lit. 212.—(No example is the same to all.)

Nullum iniquum est præsumendum in jure. 7 Co. 71.—(No iniquity is to be presumed in law.)

Nullum medicamentum est idem omnibus. Co. Lit. 317.—(No medicine is the same to all.)

Nullum simile est idem—quatuor pedibus currit. Co. Lit. 3.—(No simile is the same, and runs on four feet.)

Nullum tempus aut locus occurrit regi. 2 Inst. 273; Jenk. Cent. 83.—(No time or place affects the king.)

But see 9 Geo. III., c. 16; 32 Geo. III., c. 58; and 7 Wm. III., c. 3, which bind the Crown.

Nullus alius quam rex possit episcopo demandare inquisitionem faciendam. Co. Lit. 134.—(No other than the king can command the bishop to make an inquisition.)

Nullus capiatur aut imprisonetur propter appellam fœminæ de morte alterius quam viri sui.

M. C. 2 Inst. 68.—(No one may be taken or imprisoned on the appeal of a woman, for the death of any one than her own husband.)

Nullus commodum capere potest de injuriâ suâ propriâ. Co. Lit. 148.—(No one shall obtain an advantage by his own wrong.)

Nullus debet agere de dolo, ubi alia actio subest. 7 Co. 92.—(Where another form of action is given, no one ought to sue in an action *de dolo*.)

Nullus dicitur accessorius post feloniam, sed ille qui novit principalem feloniam fecisse, et illum receptavit et confortavit. 3 Inst. 138.

—(No one is called an accessory after the fact but he who knew the principal to have committed a felony, and received and comforted him.)

Nullus dicitur felo principalis nisi actor, aut qui præsens est, abettans aut auxilians ad feloniam faciendam.—(No one shall be called a principal felon except the party actually committing the felony, or the party present aiding and abetting in its commission.)

Nullus recedat e curiâ cancellariâ sine remedio. 4 H. 7, 4.—(Let no one depart from the Court of Chancery without a remedy.)

NUMMATA, the price of anything in money, as *denariata* is the price of a thing by computation of pence, and *librata* of pounds.

NUMMATA TERRÆ, an acre of land. *Spelm.*

Nummus [ἀπὸ τοῦ νόμου] *quia lege fit non natura.* Co. Lit. 207.—(Money, from the Greek *νόμος*, because created by law, not by nature.)

Nummus est mensura rerum commutandarum.—(Money is the measure of things that are to be changed.)

NUNC PRO TUNC, a proceeding taken now for then, i. e., the proper time when it should have been taken.

NUNCIO, a messenger, servant, &c.; a kind of spiritual envoy from the pope.

NUNCUPATE, to declare publicly and solemnly.

NUNCUPATIVE WILL, an oral testament, declared by a testator *in extremis* before a sufficient number of witnesses, and afterwards reduced to writing.

The 29 Car. II., c. 3, restricted nuncupative wills, except when made by mariners at sea and soldiers in actual service, and enacted,

1. That no written will shall be revoked or altered by a subsequent nuncupative one, except the same shall be in the lifetime of the testator reduced to writing and read over to him and approved, and unless the same be proved to have been so done by the oaths of three witnesses at the least, who, by 4 & 5 Anne, c. 16, must be such as are admissible upon trials at common law.

2. That no nuncupative will shall in anywise be good, where the estate bequeathed exceeds 30*l.*, unless proved by three such witnesses present at the making thereof, and unless they or some of them were specially required to bear witness thereto by the testator himself; and unless it was made in

his last sickness, in his own habitation or dwelling-house, or where he had been previously resident ten days at the least, except he be surprised with sickness on a journey, or from home, and dies without returning to his dwelling.

3. That no nuncupative will shall be proved by the witnesses after six months from the making, unless it were put in writing within six days. Nor shall it be proved till fourteen days after the death of the testator, nor till process has first issued to call in the widow or next of kin to contest it if they think proper. 2 Bl. Com. 500.

Nuncupative wills are abolished by 1 Vict., c. 26, § 9, but with a provision by § 11, that any soldier being in actual military service, or any mariner or seaman being at sea, may dispose of his personal estate, as he might have done before the making of this act.

NUNDINATION, traffic at fairs and markets; any buying and selling.

NUNQUAM INDEBITATUS. See NEVER INDEBTED.

Nunquam concluditur in falso.—(Nothing is falsely concluded.)

Nunquam decurritur ad extraordinarium seduli deficit ordinarium. 4 Inst 84.—(We are never to recur to what is extraordinary, till what is ordinary fails.)

Nunquam nimis dicitur quod nunquam satis dicitur. Co. Lit. 375.—(What is never sufficiently said is never said too much.)

Nunquam res humanæ prosperè succedunt ubi negliguntur divinæ. Co. Lit. 95.—(Human things never prosper where divine things are neglected.)

Nuptias non concubitas sed consensus facit. Co. Lit. 33.—(Not cohabitation but consent makes the marriage.)

NUPER OBIT (she lately died), an abolished writ that lay for a sister and co-heir, deformed by her coparcener of lands or tenements, whereof their father, brother, or any other common ancestor died seised of an estate in fee simple. *F. N. B.* 197.

NUPTIAL, pertaining to marriage; constituting marriage; used or done in marriage.

NURTURE, guardianship *for*. See GUARDIAN.

NYCTHEMERON [Gk.], the whole natural day, or day and night, consisting of twenty-four hours. *Encyc. Lond.*

O

OATH [*aith*, Goth., *ath*, Sax., *eid*, Iceland, from *ehe*, *ee*, (Germ.), an affirmation, negation, or promise, corroborated by the attestation of the Divine Being; an appeal to God. It is called *sacramentum*, a holy band or tie, and also *corporal oath*, because a witness, when he swears, places his right hand on the holy evangelists.

The laws of all civilised states require the security of an oath for evidence given in a court of justice, and on other occasions of high importance; and the christian religion utterly prohibits swearing, except when

oaths are required by legal authority. *Art. Ch. of Engl.* xxxix. All who believe in a God, the avenger of falsehood, are admitted to give evidence. All witnesses, except they be in *extremis*, must take their oath before giving testimony, even the queen. *Willes' Rep.* 550. The 7 & 8 Wm. III., c. 34, made a Quaker's affirmation, in civil cases, admissible; and by 9 Geo. IV., c. 32, Quakers and Moravians are admitted to give evidence upon their solemn affirmation in all cases, criminal as well as civil. And their affirmation has the same force and effect as an oath in the usual form. 3 & 4 Wm. IV., c. 49. The 3 & 4 Wm. IV., c. 82, extends similar provisions to separatists. See 1 & 2 Vict., c. 77. The 5 & 6 Wm. IV., c. 62, abolishes unnecessary and extra-judicial oaths, and provides, that any justice of the peace, notary public, or other officer authorized to administer an oath, is empowered to take voluntary declarations in the form specified in the act. And any person wilfully making such declaration false in any material particular, shall be guilty of a misdemeanor.

Witnesses are allowed to swear in that particular form which they consider binding on their conscience.

There are many kinds of oaths in our laws, the principal of which will be found under their distinctive names.

The administering of unlawful oaths is an offence against the government, and punishable by transportation. The following statutes relate to this offence: 37 Geo. III., c. 123; 39 Geo. III., c. 79; 52 Geo. III., c. 104; 57 Geo. III., c. 19; 1 Geo. IV., c. 1; 1 Vict., c. 91; and 2 & 3 Vict., c. 12.

OATH-BREAKING, perjury.

OATH-RITE, form used at the taking of an oath.

OBEDIENTIA, an office, or the administration of it. *Canon Law Term.*

Obedientia est legis essentia. 11 Co. 100.—(Obedience is the essence of law.)

OBEDIENTIARIUS, a monastic officer. *Du Cange.*

Ob infamiam non solet juxta legem terræ aliquis per legem apparentem se purgare nisi prius convictus fuerit vel confessus in curiâ. Glanv. lib. 14, c. 2.—(One is not wont, according to the law of the land, to purge himself from infamy, through an apparent law, unless he has been convicted, or confessed himself infamous, in a court.)

OBIT [a corruption of the Latin *obiit* or *obivit*, he died], a funeral solemnity or office for the dead; the anniversary office.

The tenure of obit, or obituary, or chantry lands is taken away by 1 Edw. VI., c. 14; and 15 Car. II., c. 9.

OBITER DICTUM (an incidental opinion), an opinion of a Judge not necessary to the judgment given of record, in contradistinction to a *judicial dictum*, which is necessary and concluding to the judgment.

This last is of much greater authority than the former, because delivered upon delibera-

tion, under sanction of the Judge's oath, while an extra-judicial opinion is no more than the *prolatum* or saying of him who gives it, a *gratis dictum*.

OBJURGATRICES, scolds, or unquiet women, punished with the cucking-stool. See **CASTIGATORY**.

OBLATA, gifts or offerings made to the king by any of his subjects; old debts, brought as it were together from preceding years, and put on the present sheriff's charge.

Oblationes dicuntur quæcunque a piis fidelibusque christianis offeruntur Deo et ecclesiæ sive res solidus sive mobiles. 2 Inst. 389.—

(Those things are called oblations which are offered to God, and to the church, by pious and faithful christians, whether they are moveable or immovable.)

OBLATIONS, offerings to God and the church; fees payable for christening, marrying, burying, and the like.

OBLIGATION, an act which binds a person to some performance; also, a bond containing a penalty, with a condition annexed for payment of money at a certain time; or for the performance of a covenant, &c.

OBLIGEE, the person in whose favour an obligation is entered into.

OBLIGOR, he who enters into an obligation.

OBLATA TERRÆ, half an acre, or, as some say, half a perch of land. *Spelm.*

OBREPTION, the obtaining a gift of the king by a false suggestion. *Scotch Term.*

OBSIGNATORY, ratifying and confirming.

OBSTRUCTION, obligation; bond.

Obtemperandum est consuetudini rationabili tanquam legi. 4 Co. 38.—(A reasonable custom is to be obeyed like law.)

OBTEST, to protest.

OBVENTIONS, offerings; tithes and oblations.

OCCASIO, a tribute which the lord imposed on his vassals or tenants for his necessity.

OCCASIONARI, to be charged or loaded with payments or occasional penalties.

OCCASIONES, assaults.

OCCISION, the act of killing.

Occultatio thesauri inventi fraudulosa. 3 Inst. 133.—(The concealment of discovered treasure is fraudulent.)

OCCUPANCY, taking possession of those things which before did not belong to any body.

The right of occupancy has been confined by the laws of England within a very narrow compass, and was extended only to a single instance; namely, where a person was tenant *pur autre vie*, or had an estate granted to himself only (without mentioning his heirs), for the life of another man, and died without alienation, during the life of *cestui que vie*, or him by whose life it was holden: in this case, he that could first enter on the land might lawfully retain the possession so long as *cestui que vie* lived, by right of occupancy. The title of common occupancy is now, in effect, abolished, for it is enacted by 1 Vict., c. 26, § 3, that an estate *pur autre*

vie, of whatever tenure, and whether it be an incorporeal or corporeal hereditament, may, in all cases, be devised by last will and testament; and (§ 6) that if no disposition by will be made of an estate *pur autre vie* of a freehold nature, it shall be chargeable in the hands of the heir, if it come to him by reason of special occupancy, as assets by descent (as in the case of freehold land, in fee-simple); and should there be no special occupant of any estate *pur autre vie*, it shall go to the executor or administrator of the party that had the estate by virtue of the grant; and in every case, where it comes to the hands of such personal representative, shall be assets in his hands, to be applied and distributed in the same manner as personal estate.

If the estate *pur autre vie* had been granted to a man and his heirs during the life of *cestui que vie*, and the grantee died without alienation, and while the life for which he held continued, there could not be a title by *common* occupancy, but the heir would succeed as *special* occupant, which law is now in force.

A property in goods and chattels may be acquired by occupancy, for

(1) It has been said, that any body authorised by the Crown may seize to his own use such goods as belong to an alien enemy.

(2) All persons may, on their own lands, or in the seas, generally exercise the right to pursue and take any fowl or insect of the air, any fish or inhabitant of the waters, and any beast or reptile of the field. The exceptions to this right are royal fish, such as whales, sturgeons, &c., animals of forest, chase, or free warren, fish belonging to a free fishery, and game.

(3) Property arising from accession. See *ACCESSION, property by*.

(4) Property arising from confusion. See *CONFUSION, property by*.

OCCUPANT, he who is in possession of a thing.

OCCUPATILE, that which has been left by the right owner, and is now possessed by another.

OCCUPATION, possession; act of taking possession; also, trade or mystery.

OCCUPATIVE, possessed, used, employed.

OCCUPAVIT, a writ that lay for him who was ejected from his freehold in time of war, as the writ of *novel disseisin* lay for one dispossessed in time of peace.

OCCUPIER, a possessor.

UCHIEM, the chief of a branch of a great family.

OCHLOCRACY, [ὄχλος, Gk., a multitude, and κρῆτος, power or command], a form of government wherein the populace has the whole power and administration in its own hand; a democracy.

Oderunt pecore boni, virtutis amore; oderunt pecore mali, formidine pœnæ.—(Good men hate sin through love of virtue; bad men through fear of punishment.)

ODHAL, allodial; which see.

ODIO ET ATRIA, a writ anciently called *breve de bono et malo*, addressed to the sheriff to inquire whether a man committed to prison upon suspicion of murder, were committed on just cause of suspicion, and only upon malice and ill will; and if, upon the inquisition, it were found that he was not guilty, then there issued another writ to the sheriff to bail him. *Reg. Orig.* 133. But the practice now is to issue an *habeas corpus*.
Odiosa et inhonesta non sunt in lege præsumenda; et in facto quod se habet, ad bonum et malum, magis de bono quam de malo præsumendum est. Co. Lit. 78.—(Odious and dishonest things are not to be presumed in law; and in an act which partakes both of good and bad, the presumption is more in favour of what is good, than what is bad.)

OECONOMICUS, an executor.

OECONOMUS, an advocate or defender.

OECONOMY, *laws of social*, those regulations in a state which relate immediately to the community at large, or to large classes of it, but which are not connected with the subject of government, whether civil or ecclesiastical. Such are the laws relating to corporations, the poor, charities, gaols, highways, trade, and navigation, public health, public conveyances, the press, houses of public reception, &c.

OFF-GOING CROP. See *AWAY-GOING CROPS*.

OFFENCE, crime; act of wickedness. It is used as a *genus*, comprehending every crime and misdemeanor, or as a *species* signifying a crime not indictable, but punishable summarily, or by the forfeiture of a penalty.

In its general sense, it comprehends the following classes of crimes, &c.:

I. Offences against the person, as

- (a) Homicide.
- (b) Self-murder.
- (c) Procuring miscarriage.
- (d) Abduction of females.
- (e) Rape.
- (f) Crime against nature.
- (g) Kidnapping and child stealing.
- (h) Assault, battery, and false imprisonment.

(i) Mayhem.

II. Offences against property, as

- (a) Arson.
- (b) Burglary.
- (c) Larceny.
- (d) Sacrilege.
- (e) Robbery.
- (f) Extortion.
- (g) Receiving stolen property.
- (h) Malicious injuries to property.
- (i) Forgery.
- (j) Obtaining money by false personation or pretences.

III. Offences against the government, as

- (a) Treason.
- (b) Misprision of treason.
- (c) Discharging fire arms or missiles, &c., at the sovereign.
- (d) Scandal against the sovereign.
- (e) Præmunire.

- (f) Contempts against the sovereign's title, or against the royal palaces.
- (g) Maladministration in high officers.
- (h) Selling public offices.
- (i) Coining, &c.
- (j) Embezzling or destroying royal stores.
- (k) Serving foreign states.
- (l) Desertion or seducing to desert.
- (m) Refusing or neglecting the oaths.
- (n) Administering unlawful oaths, or being engaged in illegal societies.
- (o) Contempts against the prerogative.
- IV. Offences against religion, as
 - (a) Apostacy.
 - (b) Heresy.
 - (c) Blasphemy.
 - (d) Reviling the ordinances of the church.
 - (e) Nonconformity.
 - (f) Common swearing.
 - (g) Witchcraft.
 - (h) Religious imposture.
 - (i) Simony.
 - (j) Sabbath breaking.
- V. Offences against the law of nations, as
 - (a) Violation of safe conducts, the rights of ambassadors, &c.
 - (b) Piracy.
- VI. Offences against public justice, as
 - (a) Stealing, injuring, or falsifying records, &c.
 - (b) Striking, or other outrage in the superior courts.
 - (c) Intimidation or improper demeanour towards parties or witnesses.
 - (d) Obstructing a lawful arrest.
 - (e) Escape.
 - (f) Breach of prison.
 - (g) Rescue.
 - (h) Returning from transportation.
 - (i) Taking a reward for stolen goods.
 - (j) Compounding of felony.
 - (k) Misprision of felony.
 - (l) Compounding of penal informations and misdemeanors.
 - (m) Common barratry.
 - (n) Maintenance.
 - (o) Champerty.
 - (p) Conspiracy.
 - (q) Perjury.
 - (r) Bribery.
 - (s) Negligence in public officers of justice.
 - (t) Oppression and partiality.
 - (u) Extortion.
- VII. Offences against the public peace, as
 - (a) Assembling under the riot act.
 - (b) Demolishing buildings and machinery.
 - (c) Sending threatening letters.
 - (d) Affrays.
 - (e) Riots, routs, and unlawful assemblies.
 - (f) Tumultuous petitioning.
 - (g) Forcible entry and detainer.
 - (h) Rioting or going armed.
 - (i) Spreading false news.
 - (j) False and pretended prophecies.
 - (k) Challenges to fight.
 - (l) Libels.
- VIII. Offences against public trade, as
 - (a) Smuggling.
 - (b) Frauds by bankrupts and insolvents.

- (c) Usury.
- (d) Cheating.
- (e) Monopoly.

IX. Offences against the public health, police, or economy, as

- (a) Violation of the quarantine and vaccination statutes.
- (b) Selling unwholesome provisions.
- (c) Common nuisances.
- (d) Bigamy.
- (e) Lewdness.
- (f) Drunkenness.
- (g) Gaming.
- (h) Furious driving.
- (i) Cruelty to animals.
- (j) Concealing a birth.
- (k) Taking up dead bodies.
- (l) Refusing to serve a public office.
- (m) Breaches of the game acts.
- (n) Vagrancy and disorderly conduct.

OFFERINGS, personal tithes, payable by custom to the parson or vicar of the parish, either occasionally, as at sacraments, marriages, christenings, churching of women, burials, &c.; or at constant times, as at Easter, Christmas, &c. 2 & 3 *Edwd. VI.*, cc. 13, 20, 21.

OFFERTORIUM, the offerings of the faithful, or the place where they are made or kept; the service at the time of sacrament.

OFFICE, that function by virtue whereof a person has some employment in the affairs of another, whether judicial, ministerial, legislative, municipal, ecclesiastical, &c. *Cowell*. It is a species of incorporeal hereditament. 2 *Bl. Com.* 36.

Also, a place where business is transacted.

OFFICE COPY, a transcript of a proceeding filed in the proper office of a court under the seal of such office.

OFFICE FOUND, an inquisition made to the sovereign's use of any thing by virtue of an inquest of office, and it is found by the inquiry.

OFFICE HOURS. The several offices of the Court of Chancery, except the offices of the accountant general, and of the masters in ordinary, and taxing masters, are to be opened on every day of the year except Sundays, Good Friday, Monday and Tuesday in Easter week, Christmas day, and all days appointed by proclamation to be observed as days of general fast or thanksgiving. *Order 5, 8th May, 1845.*

The offices of the accountant general, and of the masters in ordinary, and taxing masters, are to be opened on every day of the year, except the days specified in order 5, and except during vacations. *Order 6.*

The offices of the vacation master in ordinary, and of the vacation taxing master, are to be opened during the vacations on every day, except the days specified in order 5. *Order 7.*

The Lord Chancellor may, from time to time, by special order, direct the offices to be closed on days other than those mentioned in order 5, and direct any of the vacations to commence and terminate on

days different from the fixed days mentioned in order 8. *Order 10.*

At common law the rules of T. T., 7 Wm. IV., order that all the offices, except the rule office in Queen's Bench, and secondaries' office in Common Pleas, be opened in term from eleven in the forenoon till five in the afternoon, and not in the evening; and that the rule and secondaries' office be open in term time from eleven in the forenoon till three in the afternoon, and from six till eight in the evening; and that all the offices be open in vacation from eleven in the forenoon till three in the afternoon, except between the 10th day of August and 24th day of October, when they shall be open from eleven in the forenoon till two in the afternoon only. See *HOLIDAY; VACATION.*

OFFICE, inquest of. See *INQUEST OF OFFICE*
OFFICER, a man employed by the public, of whom there is a multitude.

Officia judicialia non concedantur antiquam vacant. 11 Co. 4.—(Judicial offices are not conceded before they are vacant.)

OFFICIAL, pertaining to a public charge.

In the civil law, he is the minister of, or attendant upon, a magistrate. In the canon law, he is the person to whom a bishop commits the charge of his spiritual jurisdiction; there is one in every diocese, called *officialis principalis*, i. e., chancellor; the rest, if there are more, are *officiales foranei*, i. e., commissaries. In our statutes, he is the person whom the archdeacon substitutes for the executing his jurisdiction. *Wood's Inst.* 30.

OFFICIAL ASSIGNEES, certain persons from the class of merchants or accountants, appointed by the Lord Chancellor, to act in all bankruptcies; one of whom shall in all cases be an assignee of the bankrupt's estate and effects, together with the assignee or assignees chosen by the creditors. All the personal estate, the profits of the realty, and the proceeds of all such estates as shall be sold, are received by such official assignee alone, and paid by him into the Bank of England to the credit of the accountant in bankruptcy. Until assignees are chosen by the creditors, he is a sole assignee of the bankrupt's estate and effects. He is attached to the proceedings at the sitting to adjudicate. 1 & 2 Wm. IV., c. 56, § 22; 5 & 6 Vict., c. 122, § 48.

OFFICIALTY, the court or jurisdiction of which an official is head.

Officia magistratus non debent esse venalia. Co. Lit. 234.—(The offices of magistrates ought not to be sold.)

OFFICIARIIS NON FACIENDIS VEL AMOVENDIS, a writ addressed to the magistrates of a corporation, requiring them not to make such a man an officer, or to put one out of the office he has, until inquiry is made of his manners, &c. *Reg. Orig.* 126.

OFFICIO, EX, oath of, an oath whereby a person may be obliged to make any presentment of any crime or offence, or to confess or accuse himself of any criminal

matter or thing, whereby he may be liable to any censure, penalty, or punishment. 3 Bl. Com. 447.

Officit conatus si effectus sequatur. Jenk. Cent. 55.—(The attempt becomes of consequence if the effect follows.)

Officium nemini debet esse damnosum.—(An office ought to be injurious to no person.)

OLD BAILEY SESSIONS, these were superseded by the Central Criminal Court: which see.

OLD STYLE. See *NEW YEAR'S DAY.*

OLERON, an island lying in the bay of Aquitaine, at the mouth of the river Charente.

This island was formerly in the possession of the Crown of England, where Richard I. composed some maritime laws, which were called the Laws of Oleron, and were the principal foundation of the maritime laws of most states in Europe.

The inhabitants of the island of Oleron have been able mariners for seven or eight hundred years past, so that they framed and drew up the laws of the navy or the marine, which are still called the laws of Oleron. According to the French writers, these maritime laws were digested in this island under the title of *Réole des Jugemens d' Oleron*, by direction of Queen Eleanor, the wife of Henry II., in her quality of Duchess of Guienne, and afterwards enlarged and improved by her son Richard I. But Selden (*de Dom. Mar.*, c. 14) denies this, and maintains that these laws were compiled and promulgated by Richard I. as King of England. However, it is proper to add, that more modern writers, as Mons. Boucher, of Paris, and our countryman, Mr. Luders, consider the whole account as fallacious—M. Boucher calling the story of our Richard I. and Queen Eleanor *une chimère des plus invraisemblables*. *Monthly Review*, Dec. 1811.

OLIGARCHY, a form of government wherein the administration of affairs is lodged in the hands of a few persons.

OLYMPIAD, a Grecian epoch; the space of four years.

OMISSION, neglect to do something, which renders void many proceedings, and sometimes is placed amongst crimes and offences.

Omissio eorum quæ tacite insunt nihil operatur. 2 Buls. 131.—(The omission of those things which are silently expressed, is of no consequence.)

OMITTANCE, forbearance.

Omne actum ab intentione agentis est judicandum. A voluntate procedit causa vitii atque virtutis. Jur. Civ.—(Every act is to be estimated by the intention of the doer. The cause of vice and virtue proceeds from the will.)

Omne crimen ebrietas et incendit et detegit. Co. Lit. 247.—(Drunkenness both lights up and produces every crime.)

Omne magis dignum trahit ad se minus dignum, quamvis minus dignum sit antiquius. Co. Lit. 355.—(Every greater worthy draws to it the minor worthy, although the minor worthy be the more ancient.)

Omne magnum exemplum habet aliquid ex in-igno, quod publicè utilitate compensatur. Hob. 279.—(Every great example has some portion of evil, which is compensated by its public utility.)

Omne majus continet in se minus : minus in se complectitur. Jenk. Cent. 208.—(The greater contains the lesser: the minor is embraced by it.)

Omne majus dignum continet in se minus dignum. Co. Lit. 43.—(The more worthy contains in itself the less worthy.)

Omne sacramentum debet esse de certâ scientiâ. 4 Inst. 279.—(Every oath ought to be of certain knowledge.)

Omnes prudentes, illa admittere solent quæ probantur iis qui in arte suâ bene versati sunt. 7 Co. 19.—(All prudent men are accustomed to admit those things which are approved by those who are well versed in the art.)

Omnes reges dicuntur clerici. Dav. 4.—(All kings are called clerical.)

Omnes sorores sunt quasi unus hæres de unâ hæreditate. Co. Lit. 67.—(All sisters are, as it were, one heir to one inheritance.)

Omnes subditi sunt regis servi. Jenk. Cent. 126.—(All subjects are the king's servants.)

Omne testamentum morte consummatum est. 3 Co. 29.—(Every will is completed by death.)

Omni exceptione majus. 4 Inst. 262.—(Above all exception.)

Omnia delicta in aperto leviora sunt. 8 Co. 127.—(All crimes done openly are lighter.)

Omnia præsumuntur contra spoliatores.—(All things are presumed against a wrong doer.)

Omnia præsumuntur legitimè facta donec probetur in contrarium. Co. Lit. 232.—(All things are presumed legitimately done, until it be proved contrariwise.)

Omnia præsumuntur solemniter esse acta. Co. Lit. 6.—(All things are presumed to be done solemnly.)

Omnia quæ movent ad mortem sunt deodanda. 3 Inst. 57.—(All things which move to death are deodanda.)

But deodands are abolished by 9 & 10 Vict., c. 62.

Omnia quæ sunt uxoris sunt ipsius viri ; non habet uxor potestatem sui, sed vir. Co. Lit. 112.—(All things which belong to the wife belong to the husband; the wife has no power of her own, the husband has it all.)

Omni actio est loquela. Co. Lit. 292.—(Every action is a complaint.)

Omni conclusio boni et veri judicii sequitur ex bonis et veris præmissis et dictis juratorum. Co. Lit. 226.—(Every conclusion of a good and true judgment arises from good and true premises, and sayings of juries.)

Omni consensus tollit errorem. 2 Inst. 123.—(Every assent removes error.)

Omni innovatio plus novitate perturbat quam utilitate prodest. 2 Bulst. 338.—(Every innovation disturbs more by its novelty than benefits by its utility.)

Omni interpretatio si fieri potest ita fienda est in instrumentis, ut omnes contrarietates amoveantur. Jenk. Cent. 96.—(Every interpretation, if it can be done, is to be so made

in instruments, that all contradictions may be removed.)

Omni nova constitutio futuris temporibus formam imponere debet, non præteritis. 2 Inst. 95.—(Every new institution should give a form to future times, not to past.)

Omni privatio præsupponit habitum. Co. Lit. 339.—(Every privation presupposes former enjoyment.)

Omni querela et omni actio injuriarum limitata est infra certa tempora. Co. Lit. 114.—(Every plaint, and every action for injuries, are limited within certain times.)

Omni ratihabitio retro trahitur et mandato priori æquiparatur. Co. Lit. 207.—(Every consent given to what has been already done has a retrospective effect, and is equivalent to a previous request.)

OMNIUM, the aggregate of certain portions of different stocks in the public funds. *Comm. Term.*

Omniū domos regum vigiliis defendit, ideo lex vigilat pro rege. Jenk. Cent. 61.—(A watch defends the palaces of all kings, inasmuch as the law watches for the king.)

Omniū rerum quarum usus est, potest esse abusus, virtute solo excepta. Dav. 79.—(There may be an abuse of everything of which there is an use, virtue alone excepted.)

ONCUNNE, accused.

ONERANDO PRO RATA PORTIONIS, a writ that lay for a joint tenant, or tenant in common, who is distrained for more rent than his proportion of the land comes to. *Reg. Orig.* 182.

ONERARI NON DEBET (he ought not to be obliged), a form of commencement of a pleading, substituted in some few cases for *actionem non*. But see *H. T.*, 4 *Wm. IV.*, and the cases 1. *Saund.* 290, n. b.

ONEROUS CAUSE, a good and legal consideration. *Scotch Term.*

O. NI. It was the course of the Exchequer, as soon as the sheriff entered into and made up his account for issues, amerciaments, &c., to mark upon each head *O. Ni.*; which denoted *oneratur, nisi habeat sufficientem exonerationem*, and presently he became the king's debtor, and a *debet* was set upon his head; whereupon the parties *paravaile* became debtors to the sheriff, and were discharged against the king, &c. 4 *Inst.* 116.

But sheriffs now account to the commissioners for auditing the public accounts.

ONUS EPISCOPALE, ancient customary payments from the clergy to their diocesan bishop, of synodals, pentecostals, &c.

ONUS IMPORTANDI, the charge or burden of importing merchandise.

ONUS PROBANDI, the burden of proof. See **BURDEN OF PROOF**.

OPENING A FIAT, the commencement of proceedings in bankruptcy at the private sitting before the Court of Bankruptcy in London, or the district court in the country. Proofs are adduced of the trading, act of bankruptcy, and petitioning creditor's debt. An adjudication is then made by the court that the party is bankrupt (supposing the

proofs to be sufficient), an official assignee is appointed, and the messenger put into possession of the bankrupt's property. Unless the trader show sufficient cause for annulling the adjudication (for which purpose he must give two days' notice thereof, within the five days given to him to consider whether he will show cause), notice thereof is given in the London Gazette, and an appointment therein made of two public sittings, at which the bankrupt is to surrender himself, and submit to be examined, and otherwise conform to the law. He may, however, sign a consent to the advertisement being inserted at once, thus saving the five days' notice to him.

Immediately on the issuing of the fiat, if the court see probable cause to believe that the bankrupt is about to remove his property fraudulently, possession may be taken at once; and the court may order his arrest if it be shown that he meditates a departure from the realm. *Flather's Arch. Bankruptcy*, tit. *Opening the Fiat*.

OPENING BIDDINGS, where estates are sold before a master, under the decree of a court of equity, the court considers itself to have a greater power over the contract than it would have were the contract made between party and party; and as the chief aim of the court is to obtain as great a price for the estate as can possibly be got, it is in the habit of opening the biddings after the estate is sold.

When a person is desirous of opening a bidding, he must, at his own expense, apply to the court, by motion for that purpose, stating the advance offered. Notice of the motion must be given to the person reported the purchaser of the lot, and to the parties in the cause. If the court approve of the sum offered, the application will be granted, and on the order being drawn up, entered, and served, a new sale must be had before the master. The order is made at the expense of the person opening the biddings, and he must bear the expense of paying in his deposit, and pay the costs of the first purchaser, and interest, at the rate of four per cent., on such part of the purchase money as the master shall find to have lain dead. The biddings will be opened more than once, even on the application of the same person, if a sufficient advance be offered. Biddings, generally, cannot be opened after the confirmation of the master's report of the highest bidder. Where the biddings are opened, the advance is to be deposited immediately.

The biddings of an estate sold under a fiat in bankruptcy have lately been opened in analogy to the rules upon sales in courts of equity. 1 *Sugd. V. & P.* 121.

OPENING THE PLEADINGS. On a trial before a jury, the counsel, who holds the affirmative of the question at issue, begins, because he is called upon to give evidence in support of his case, in conformity to the civil law maxim:—*ei incumbit probatio, qui dicit, non qui negat; cum per rerum naturam actum-negantis probatio nulla sit.* *Cod.* 4.

OPEN LAW [*lex manifesta*], the making or waging of law.

OPEN THEFT [*open theof*, Sax.], a theft that is manifest.

OPEN TIDE, the time after corn is carried out of the fields.

OPERARII, such tenants, under feudal tenures, who had some little portions of land by the duty of performing many bodily labours and servile works for their lord, being no other than the *servi* or bondmen.

OPERATIO, one day's work performed by a tenant for his lord.

OPETIDE, the ancient time of marriage, from Epiphany to Ash Wednesday.

Opinio est duplex: scilicet opinio vulgaris, orta inter graves et discretos, et quæ vultum veritatis habet; et opinio tantum orta inter leves et vulgares homines, absque specie veritatis. 4 Co. 107.—(Opinion is of two kinds, namely, common opinion, which springs up among grave and discreet men, and which has the appearance of truth, and opinion only which springs up among light and foolish men, without the semblance of truth.)

Oportet quod certæ personæ, terræ, et certi status, comprehendantur in declaratione usus. 9 Co. 9.—(It is right that certain persons, lands, and certain estates, should be comprehended in a declaration of uses.)

Oportet quod certa res deducatur in iudicium. Jenk. Cent. 84.—(A thing certain must be brought to judgment.)

OPPOSER, an officer formerly belonging to the green wax in the Exchequer.

Opposita juxta se posita magis elucescent. Bacon.—(Things opposite are more conspicuous when placed together.)

OPPRESSION, the trampling upon or bearing down a person, under pretence of law, which is unjust.

Optima est lex quæ minimum relinquit arbitrio judicis; optimus judex qui minimum sibi. Bac. Aphor. 46.—(That system of law is best which confides as little as possible to the discretion of a Judge; that Judge the best who relies as little as possible on his own opinion.)

Optima statuti interpretatrix est (omnibus particulis ejusdem inspectis) ipsum statutum. 8 Co. 117.—(The best interpreter of a statute is (all the separate parts being considered), the statute itself.)

OPTIMACY, nobility; men of the highest rank.

Optimus interpret rerum usus. 2 Inst. 282.—(Use is the best interpreter of things.)

Optimus interpretandi modus est sic leges interpretare ut leges legibus concordant. 8 Co. 169.—(The best mode of interpretation is so to interpret that the laws may accord with the laws.)

Optimus legum interpret consuetudo. 4 Inst. 75.—(Custom is the best interpreter of the laws.)

OPTION. When a new suffragan bishop is consecrated by the archbishop of the province by a customary prerogative, the arch-

bishop claims the collation of the first vacant dignity or benefice in that see, at his own choice, *i. e.*, option. *Cowell.*

OPTIONAL WRIT, a *præcipe*, because it was in the alternative, commanding the defendant to do the thing required, or show the reason wherefore he had not done it.

ORA, a Saxon coin, valued at 16 pence, and sometimes at 20 pence. *Domesday.*

ORAL, delivered by the mouth; not written.

ORAL PLEADING, pleading by word of mouth in presence of the Judges. This was the original mode of pleading; it was, however, superseded by written pleading in the reign of the third Edward.

ORANDO PRO REGE ET REGNO, an ancient writ which issued while there was no standing collect for a sitting Parliament, to pray for the peace and good government of the realm.

ORATOR, a petitioner; a plaintiff in a bill or information in Chancery.

ORATRIX or **ORATRESS**, a female petitioner; a female plaintiff in a bill in Chancery.

ORBATION, privation of parents or children; poverty. *Cockeram.*

ORDEAL [*ordal*, Sax., from *or*, great, and *dele*, judgment], an ancient manner of trial in criminal cases, practised amongst our Saxon ancestors. There were four sorts: 1), camp-fight, *duellum*, or combat; (2), fire ordeal; (3), hot water ordeal; (4), cold water ordeal; which titles see. *Verstegan's Debased Intelligence*, 64; *Turner's Ang. Sax.*, vol. ii., 532; *Hallam's Mid. Ages*, vol. ii., 466. They are, of course, all abolished.

ORDEFFE or **ORDELFE**, a liberty whereby a man claims the ore found in his own ground; also, the ore lying under ground.

ORDELS, the right of administering oaths and adjudging ordeal trials within such a precinct or liberty. *Cowell.*

ORDER, mandate, precept, command; also, a class or rank.

Orders are promulgated by the courts of law and equity, not only for the proper regulation of their own proceedings, but also to enforce obedience to justice, and compel that which is right to be performed.

ORDERS OF THE CLERGY. See **HOLY ORDERS.**

ORDINANCE, law, rule, prescript.

ORDINANCE OF THE FOREST, a statute made touching matters and causes of the forest. 33 & 34 *Edw. I.*

ORDINANCE OF PARLIAMENT, act of Parliament; *acts* and *ordinances* being convertible terms. There seems, however, to be this difference between them:—an *ordinance* was but a temporary act, not introducing any new law, but founded on acts formerly made; an *act* was a perpetual law not to be altered but by queen, lords, and commons. These distinctions are not now observed.

Ordinarius ita dicitur quia habet ordinariam jurisdictionem, in jure proprio, et non propter

deputationem. Co. Lit. 96.—(The ordinary is so called, because he has an ordinary jurisdiction in his own right, and not a deputed one.)

ORDINARY, a Judge who has authority to take cognizance of causes in his own right, and not by deputation. *Civil Law Term.*

By the common law, one who has exempt and immediate jurisdiction in causes ecclesiastical.

Also, a bishop; and an archbishop is the ordinary of the whole province, to visit and receive appeals from inferior jurisdictions. Also, a commissary or official of a bishop or other ecclesiastical Judge having judicial power; an archdeacon; officer of the royal household.

ORDINARY OF ASSIZE AND SESSIONS, a deputy of the bishop of the diocese, anciently appointed to give malefactors their neck verses, and judge whether they read or not; also, to perform divine services for them, and assist in preparing them for death.

ORDINARY CONVEYANCES, those deeds of transfer which are entered into between two or more persons, without an assurance in a superior court of justice. They are divided into:

I. Conveyances at common law, which are subdivided into:

(a) Original; which are

(a) Feoffment.

(b) Gift.

(c) Grant.

(d) Lease.

(e) Exchange.

(f) Partition; and

(β) Derivative; which are

(a) Release.

(b) Confirmation.

(c) Surrender.

(d) Assignment.

(e) Defeasance.

II. Conveyances under the Statute of Uses; which are

(a) Feoffment to uses.

(b) Covenant to stand seised.

(c) Bargain and sale.

(d) Statutory release.

(e) Deed to lead or declare the uses of other more direct conveyances.

(f) Revocation of uses.

ORDINARY OF NEWGATE, one who is attendant upon the condemned malefactors in that prison to prepare them for death; he records the behaviour of such persons. Formerly, it was the custom of the ordinary to publish a small pamphlet upon the execution of any remarkable criminal.

ORDINATION, the conferring holy orders; or initiating a person into the priesthood. The first thing necessary, on application for holy orders, is the possession of a title, that is, a sort of assurance from a rector to the bishop, that, provided the latter finds the party fit to be ordained, the former will take him for his curate, with a stated salary. The candidate is then examined by the bishop or his chaplain respecting both his

faith and his erudition; and various certificates are necessary, particularly one signed by the clergyman of the parish in which he has resided during a given time. Subscription to the 39 articles is required; and a clerk must have attained his 23rd year before he can be ordained a deacon; and his 24th to receive priest's orders. The ceremony of ordination is performed by the bishop, by the imposition of hands on the person to be ordained. In the English church, and in most Protestant countries where the church is connected with the state, ordination is a requisite to preaching; but, in some sects, ordination is not considered necessary for that purpose, although it is considered proper, previous to the administration of the sacraments.

In the Presbyterian and congregational churches, ordination means the act of settling or establishing a licensed preacher over a congregation with pastoral charge and authority, or the act of conferring on a clergyman the powers of a settled minister of the gospel, without the charge of a particular church, but with general powers wherever he may be called on to officiate.

ORDINATIONE CONTRA SERVIENTES, a writ that lay against a servant for leaving his master, contrary to the ordinance or statute 23 & 25 Edw. III. *Reg. Orig.* 189.

Ordine placitandi servato, servatur et jus. Co. Lit. 303.—(The order of pleading being preserved, the law is preserved.)

ORDINES, a general chapter or other solemn convention of the religious of such a particular order.

ORDINES MAJORES ET MINORES, the holy orders of priest, deacon, and sub-deacon, any of which did qualify for presentation and admission to an ecclesiastical dignity or cure, were called *ordines majores*; and the inferior orders of chanters, psalmists, ostiary, reader, exorcist, and acolyte, were called *ordines minores*; for which the persons so ordained had their *prima tonsura*, different from the *tonsura clericalis*. *Cowell*.

ORDINUM FUGITIVI, those of the religious who deserted their houses, and, throwing off the habits, renounced their particular order in contempt of their oath and other obligations. *Par. Antiq.* 388.

ORDNANCE DEBENTURES, bills issued by the Board of Ordnance on the treasurer of that office for the payment of stores, &c.

ORDNANCE OFFICE or **BOARD OF ORDNANCE**, an office kept within the Tower of London, which superintends and disposes of all the arms, instruments, and utensils of war, both by sea and land, in all the magazines, garrisons, and forts of Great Britain. It is divided into two distinct branches, the civil and the military; the latter being subordinate to and under the authority of the former. 4 & 5 W. IV., c. 24., § 4.

ORDO, that rule which the monks were obliged to observed.

ORDO ALBUS, the white friars or Augustines; the Cistercians also wore white.

ORDO NIGER, the black friars. The Cistercians likewise wore white.

Ordo nobilium pluribus gaudet privilegiis. Jenk. Cent. 107.—(The rank of nobility enjoys many privileges.)

ORE TENUS (by word of mouth).

ORFGILD [*orf*, Sax., cattle, and *gild*, recompense], a delivery or restitution of cattle. But Lambard says, it is a restitution made by the hundred or county for any wrong done by one who was in pledge, or rather a penalty for taking away cattle. *Lamb. Arch.* 125.

ORGILD, without recompense; as, where no satisfaction was to be made for the death of a man killed, so that he was judged lawfully slain. *Spelm.*

ORIGE. See **ORWIGE**.

ORIGINAL BILLS IN EQUITY. See **BILL IN CHANCERY**.

ORIGINAL CHARTER, that which is granted first to the vassal by the superior. *Scotch Phrase*.

ORIGINAL WRIT or **ORIGINAL** (*breve originale*), the beginning or foundation of a real action at common law. It is also applied to processes for some other purposes.

It is a mandatory letter issuing out of the common law or ordinary jurisdiction of the Court of Chancery, under the Great Seal, and, in the sovereign's name, addressed to the sheriff of the county where the injury is alleged to have been committed, containing a summary statement of the cause of complaint, and requiring him to command the defendant to satisfy the claim, and on his failure to comply, then to summon him to appear in one of the superior courts of common law, there to account for his non-compliance. In some cases, however, it omits the former alternative, and requires the sheriff simply to enforce the appearance.

Original writs differ from each other in their tenor, according to the nature of the plaintiff's complaint, and are conceived in fixed and certain forms. Many of these forms are of a remote and undefined antiquity, but others are of later origin, and their history is as follows:

The ancient writs had provided for the most obvious kinds of wrong; but in the progress of society, cases of injury arose new in their circumstances, so as not to be reached by any of the writs then known in practice; and it seems that either the clerks of the Chancery (whose duty it was to prepare the original writ for the suitor), had no authority to devise new forms to meet the exigency of such cases, or their authority was doubtful, or they were remiss in its exercise. Therefore, by the statute of West. 2, 13 Edw. I., c. 24, it was provided, "That as often as it shall happen in the Chancery that in one case a writ is found, and in a like case, falling under the same right, and requiring like remedy, no writ is to be found, the clerks of the Chancery shall agree in making a writ or adjourn the

complaint till the next parliament, and write the cases in which they cannot agree, and refer them to the next parliament, &c." This statute, while it gives to the officers of the Chancery the power of framing new writs in a like case with those that formerly existed, and enjoins the exercise of that power, does not give or recognise any right to frame such instruments for cases entirely new. It seems, therefore, that for any case of that description, no writ could be lawfully issued except by authority of parliament. But, on the other hand, new writs were copiously produced, according to the principle sanctioned by this act, i. e., in a like case, or upon the analogy of actions previously existing; and other writs, also, being added from time to time, by express authority of the legislature, large accretions were thus, on the whole, made to the ancient stock of *brevia originalia*.

All forms of writs once issued were entered from time to time, and preserved in the Court of Chancery in a book called "The Register of Writs," which in the reign of Henry VIII. was first committed to print and published. This book is still an authority, as containing in general an accurate transcript of the forms of all original writs as then framed. But a variation from the register is not conclusive against the propriety of a form, if other sufficient authority can be adduced to prove its correctness.

It was essential to the due institution of all actions in the superior courts, that they should commence by original writ, and in real actions this is still necessary; but in personal actions the use of original writs is abolished, and they are commenced by writ of summons. 2 Wm. IV., c. 39; 1 & 2 Vict., c. 110.

These instruments, however, have had the effect of limiting and defining the right of action itself, and no cases are even now considered as within the scope of judicial remedy, but those to which some known original writ (when these instruments were in universal use) would have applied, or for which some new original writ, framed on the analogy of those already existing, might, under the provisions of the statute Westminster 2, have been lawfully devised. The enumeration of writs and that of actions, have become, in this manner, identical.

Great uncertainty exists as to the origin of these ancient writs. Some eminent authorities declare that these writs had their origin in the Roman law, and were in use long before the time of the Conqueror: while others as confidently assert that we derived them, through Normandy, from a Francic source. *Step. on Plead., app. n. ii.*

The following original writs are issued, not *ex delicto justitiæ* but *ex gratiâ*, and are sometimes denominated discretionary writs: *De ventre inspiciendo*; *supplicavit*; *certiorari*; prohibition; writs of error in criminal cases; *ad quod damnum*; *scire facias*, to repeal letters-patent, &c. See 1 Madd. ch. 7.

ORIGINALIA, transcripts sent to the remembrancer's office in the Exchequer out of the Chancery, distinguished from *recorda*, which contain the judgments and pleadings in actions tried before the Barons.

Origo rei inspici debet. 1 Co. 99.—(The origin of a thing ought to be inquired into.)

ORNEST, the trial by battle, which does not seem to have been usual in England before the time of the Conqueror, though without doubt originating in the kingdoms of the North, where it was practised under the name of *holmgang*, from the custom of fighting duels on a small island or *holm*. *Anc. Inst. Eng.*

ORPHAN, a fatherless child or minor, or one deprived of both father and mother.

The Lord Chancellor is the general guardian of all orphans and minors throughout the realm.

In London, the Lord Mayor and Aldermen have the custody of the orphans of deceased freemen, and also the keeping of their lands and goods: accordingly, the executors and administrators of freemen leaving such orphans, are to exhibit inventories of the estate of the deceased, and give security to the chamberlain for the orphan's part.

Orta est questio, si quis ante patrem suam desponsaverat, fuerit genitus vel natus, utrum talis filius sit legitimus hæres, cum postea matrem suam desponsaverat: et quidem, licet secundum canones et leges Romanas, talis filius sit legitimus hæres; tamen secundum jus et consuetudinem regni nullo modo tanquam hæres in hæreditate sustinetur vel hæreditatem, de jure regni petere potest. 2 Inst. 96.—(A question arose whether any one born before his father married his mother, could become a legitimate heir, if he married her afterwards: and indeed, by the canon and Roman laws, such a son would be a legitimate heir; but by the law and custom of this kingdom, such person could by no means be considered as heir, or succeed to the inheritance.)

(ORTELLI, the claws of a dog's foot. *Kitch.*

(ORTOLAGIUM, a garden plot or hortilage.

ORWIGE—SINE WITA without war or feud, such security being provided by the laws, for homicides under certain circumstances, against the *fehth*, or deadly feud, on the part of the family of the slain. *Anc. Inst. Eng.*

OSTENSIBLE PARTNER, one whose name is made known, and appears to the world as a partner, and is really such.

OSTENSIO, a tax anciently paid by merchants, &c., for leave to show or expose their goods to sale in markets. *Du Cange. Anc. Inst. Eng.*

OSTIUM ECCLESIAE, *dower ad*, where tenant in fee simple, of full age, openly at the church door, where all marriages were formerly celebrated, after affiance made and troth plighted between them, endowed his wife with the whole, or such quantity as he pleased, of his lands, at the same time spe-

cifying and ascertaining the same; on which the wife, after her husband's death, might enter without further ceremony. Abolished by 3 & 4 Wm. IV., c. 105.

OSWALD'S LAW, the law by which was effected the ejection of married priests, and introducing monks into churches, by Oswald, Bishop of Worcester, about A.D. 964.

OSWALD'S LAW HUNDRED, an ancient hundred in Worcestershire, so called from Bishop Oswald, who obtained it of King Edgar, to be given to St. Mary's church in Worcester. It is exempt from the sheriff's jurisdiction, and comprehends 300 hides of land. *Camd. Brit.*

OURLOP, the lierwite or fine paid to the lord by the inferior tenant, when his daughter was corrupted or debauched.

OUSTED, dispossessed.

OUSTER, dispossession.

A wrong or injury that may be sustained in respect of hereditaments, corporeal or incorporeal, and carries with it the amotion of possession; for thereby the wrongdoer gets into the actual occupation of the land or hereditament, and obliges him that has a right to seek his legal remedy, in order to gain possession and damages for the injury sustained. Such dispossession may be either of the freehold or of chattels real.

Ouster of the freehold is effected by various methods: 1st, by abatement; 2d, intrusion; 3d, disseisin; 4th, deforcement; and, 5th, discontinuance.

Ouster of chattels real, consists, 1st, of amotion of possession from estates held by statute, recognizance, or elegit, which happens by a species of disseisin or turning out of the legal proprietor before his estate is determined by raising the sum for which it is given to him in pledge; and, 2d, of amotion of possession from an estate of years, which also takes place by a like kind of disseisin, ejection or turning out of the tenant from the occupation of the land during the continuance of his term.

The following are the present modes of remedy:—

In the case of land or corporeal hereditaments, the only proper remedy is by way of specific recovery; a mere action for damages, though it will also lie, being in general obviously inadequate to the nature of the injury. The only modes of obtaining a specific recovery, which are generally applicable, are those of entry or ejectment. There are, however, besides these, the two real actions of dower, by which redress is given for one particular species of deforcement. And there are some particular cases of ouster, for which particular remedies are provided, besides those by action. In the case of referable entry and ouster, the statutes against forcible entries and detainers give the power to justices of the peace to restore possession. In cases between landlord and tenant, where half a year's rent is in arrear, and the tenant has deserted the premises, and left the same uncultivated or unoccupied, the 11 Geo. II.,

c. 19, § 16, and 59 Geo. III., c. 52, authorize a proceeding before two justices of the peace to obtain restitution. By 59 Geo. III., c. 12, §§ 17, 24, 25, paupers intruding into parish property may be dispossessed by warrant of two justices of the peace; and by 1 & 2 Viet., c. 74, a method of proceeding before two justices in petty sessions, to obtain possession, is also provided for landlords in certain cases of holding over by tenants when the rent does not exceed 20l., nor the term seven years, and no fine reserved on forfeiture, &c.

As to the remedy upon ouster of incorporeal hereditaments, such as commons, advowsons, and the like, these also may be claimed in the action of dower, supposing the claimant to be a dowress; and tithes may be recovered in ejectment; and a next presentation by an action of *quare impedit*. The general remedy is an action of trespass on the case, in which damages are recovered for the invasion of the right. 3 *Step. Com.* 482.

OUSTERLEMAIN [*amovere manum*], the delivery of the lands out of the guardian's hands, upon the male heir attaining twenty-one, or the female heiress sixteen years of age. Abolished by 12 Car. II., c. 24.

Also, a livery of land out of the sovereign's hands, on a judgment given for him that sued out a *monstrans de droit*.

OUSTER LE MER, beyond the sea; a cause of excuse, if a person, being summoned, did not appear in court.

OUT OF COURT, a plaintiff in an action at common law, must declare within one year after the service of a writ of summons, otherwise he is out of court, unless the court shall have, by special order, enlarged the time for declaring.

OUTFANGTHEF, a liberty or privilege, as used in the ancient common law, whereby a lord was enabled to call any man dwelling in his manor, and taken for felony in another place, out of his fee, to judgment in his own court.

OUTHEST or **OUTHOM**, a calling men out to the army by sound of horn.

OUTHOUSES, buildings belonging and adjoining to dwelling houses.

OUTLAND, land lying beyond the demesnes, and granted out to tenants at the will of the lord, like copyholds. Subdivided into *theodans*, or lesser thanes, disposed amongst those who attended the lord, and those parts allotted to their husbandmen or churls. *Spelm.*

OUTLAW [*utlaghe*, Sax., *utlagatus*, Lat.], a person put out of the law, or deprived of its benefits.

OUTLAWRY [*utlagaria*], the being put out of the law.

I. Civil actions.

It is a proceeding adopted against a defendant who has absconded and cannot be found. If the defendant be a woman, the proceeding is called a waiver; for as women were not sworn to the law by taking the oath of allegiance in the leet (as men

anciently were when of the age of twelve years and upwards), they could not properly be outlawed, but were said to be waived, *i. e.*, *derelicta*, left out, or not regarded. And for the same reason an infant cannot be outlawed under the age of twelve years. Peers and members of Parliament are exempt from outlawry, except in criminal cases. Where there are several defendants, there may be outlawry against one or more of them; and till the latter are outlawed or have appeared, plaintiff cannot proceed in the action against the rest.

(a) Before judgment.

By 2 Wm. IV., c. 39, the action must (before 1 & 2 Vict., c. 110) have been commenced either by writ of *capias*, or writ of summons and *distringas* thereon; and § 5 of the act enacts, "that, upon the return of *non est inventus*, as to any defendant against whom such writ of *capias* shall have been issued, and also upon the return of *non est inventus* and *nulla bona*, as to any defendant against whom such writ of *distringas* shall have issued (whether such writ of *capias* or *distringas* shall have issued against such defendant only, or against such defendant and any other person or persons), it shall be lawful, until otherwise provided for, to proceed to outlaw or waive such defendant by writ of *exigi facias*, and proclamation, and otherwise, in such and the same manner as may now be lawfully done upon the return of *non est inventus* to a *pluries* writ of *capias ad respondendum* issued after an original writ. Provided always, that every such writ of exigent, proclamation, and other writ subsequent to the writ of *capias* or *distringas*, shall be made returnable on a day certain in term; and every such first writ of exigent and proclamation shall bear teste on the day of the return of the writ of *capias* or *distringas*, whether such writ be returned in term or vacation; and every subsequent writ of exigent and proclamation shall bear teste on the day of the return of the next preceding writ; and no such writ of *capias* or *distringas* shall be sufficient for the purpose of outlawry or waiver, if the same be returned within less than fifteen days after the delivery thereof to the sheriff or other officer to whom the same shall be directed." But since the 1 & 2 Vict., c. 110, § 2, every personal action must be commenced by writ of summons, and consequently the provisions as to outlawry on writs of *capias* do not apply, the mode of proceeding being by summons and *distringas*.

The *exigi facias* is a judicial writ commanding the sheriff to demand the defendant from county court to county court, until he be outlawed; or, if he appear, then to take and have him before the court on a day certain in term, to answer the plaintiff in an action of, &c. It is tested on the return of the *distringas* whether in term or vacation, and returnable in the same or following term on a day certain; and must have fifteen days at least between the teste and the return.

The writ of proclamation recites the *exigi facias*, and requires the sheriff to make three proclamations, in pursuance of 31 Eliz., c. 3; and 1 Vict., c. 45, § 2. If not directed to the same sheriff to whom the *exigi facias* was directed, it is called a writ of *foreign proclamation*. It is tested and made returnable the same as the *exigi facias*.

The *exigi facias* is executed by exacting the defendant at five successive county courts, or in London, at five successive hustings, unless, before that time, the defendant appear, &c. The writ of proclamation is executed by making three proclamations: one in the county court or hustings; one at the general quarter sessions; and one other to be made one month at least before the *quinto exactus*, on a Sunday, immediately after divine service and sermon, at or near the usual door of the nearest church or chapel of the town or parish where the defendant was dwelling at the time of the awarding of the exigent, or by affixing a written, or printed, or partly written and partly printed notice of such proclamation, at or near to the doors of all the churches and chapels within such town or parish, previously to the commencement of divine service.

If there are not five county courts or hustings between the teste and return of the *exigi facias*, there must be issued an *allocatur exigent* so as to make up the number.

If the defendant appear before the return of the exigent, a *supersedeas* is issued to stay any further proceedings in the sheriff's office. If the defendant do not appear, he is outlawed at the return of these writs, and a *capias utlagatum* issues, which is either general, against the person only, or special, against the person, lands, and goods.

If the defendant have not as yet appeared, &c., and there is no probability of his doing so, satisfaction for the debt and costs may be obtained out of the property seised under the *capias utlagatum*. A transcript of the proceedings are obtained from the master, and taken to the Exchequer, where a rule is granted for persons to come in and claim the property seised, upon the expiration of which rule a *venditioni exponas* issues to the sheriff to sell the goods, a *levari facias* to levy the issues and profits of the freehold land, and a *scire facias* to recover debts due to the defendant, if necessary. If, to a special *capias utlagatum*, the sheriff return an inquisition, finding that the defendant had benefices, but no lay fee, the court will award a writ of sequestration on reading the transcript of the outlawry and inquisition.

When the goods have been sold, &c., if the amount do not exceed the sum of fifty pounds, a motion is made in the Court of Exchequer for an order to pay it over to the person at whose instance the outlawry has taken place, and a *subpœna* will issue to the sheriff requiring him to pay over the proceeds, deducting the necessary expenses. If the money exceed fifty pounds, the Lords of

the Treasury must be petitioned, and the Attorney General's consent must be obtained. If the debt be considerable, and the chattel property not sufficient to satisfy it, a lease or grant of the Queen's right to levy the issues of the defendant's freehold lands, by petition to the Lords of the Treasury might be obtained. A warrant will thereupon be granted for the lease, and the lease is made out at the Pipe Office of the Court of Exchequer.

(β) After judgment.

If *non est inventus* be returned to a *ca. sa.*, an *exigi facias* may be sued out, and then a *capias utlagatum*, as above; but it is not necessary to issue a writ of proclamation. A defendant cannot be outlawed on a judgment, after error brought.

The defendant may be relieved from the outlawry either by obtaining the Queen's pardon, or by reversing it, either by an application to the court, or a Judge at chambers, or by writ of error, *coram nobis*.

II. Criminal prosecutions.

If a defendant cannot be arrested on a *capias* or bench warrant, he is liable, on his non-appearance, to an indictment, to be outlawed. In misdemeanors, the first process is a *venire facias*, which is for the party's appearance, upon the return of which, if it appear that he have lands in the county, a distress infinite issues from time to time till he appears; if he have no lands, then a *capias* issues, and then an *alias* and *pluries*. In treason and felony, a *capias* is the first process. The exigent is then issued, and a writ of proclamation, as in civil cases, and on his not appearing at the fifth exaction or inquisition, he is outlawed, and incapable of availing himself of the benefit of the law.

The forfeiture upon indictments for misdemeanors is the same as in civil actions; but in treason or felony, it amounts to a conviction and attainder of the offence, and he may be arrested by any one in order to be brought to execution.

The outlawry may be reversed by plea or writ of error. 4 *Step. Com.* 387.

The maxim applicable to outlaws is, "Let them be answerable to all, and none to them." Accordingly, any person outlawed is *civiliter mortuus*. He can hold no property given or devised to him; and all the property which he held before is forfeited. He can neither sue on his contracts, nor has he any legal rights which can be enforced; while, at the same time, he is personally liable upon all causes of action. He can, however, bring actions *in autre droit*, as executor, administrator, &c., because, in such actions, he only represents persons capable of contracting, and under the protection of the law. *Eap. Franks*, 7 Bing. 767.

OUTPARTERS, stealers of cattle.

OUTPUTERS, such as set watches for the robbing any manor house. *Cowell*.

OUTRIDERS, bailiffs errant employed by sheriffs or their deputies, to ride to the

extremities of their counties or hundreds to summon men to the county or hundred court.

OUTSTANDING TERM, a term in gross at law, which, in equity, may be made attendant upon the inheritance, either by express declaration or by implication.

OUTSUCKEN MULTURES, quantities of corn paid by persons voluntarily grinding corn at any mill to which they are not thirled or bound by tenure.

OVELTY, a kind of equality of service in subordinate tenures.

OVERCYTED or OVERCYHSED, proved guilty or convicted.

OVERDUE, past the time of payment.

When bills of exchange are indorsed after they are overdue, the indorsee is liable to great suspicion; and it behoves him to use every precaution, and make every possible inquiry, for he takes the bill with all its faults on the credit of the indorser, and must stand in the same situation as the holder when the bill first became payable. This rule, however, does not apply to cheques. 9 B. & C. 388.

By 17 Geo. III., c. 7, an overdue bill under 5*l.* cannot be indorsed.

OVERHERNISSA, contumacy or contempt of court.

OVERSAMESSA, a forfeiture for contempt or neglect in not pursuing a malefactor.

OVERSEERS OF THE POOR, public officers created by the 43 Eliz., c. 2, to provide for the poor of every parish, and are sometimes two, three, and four, according to the extent of parishes. Churchwardens are, by this statute, overseers of the poor, and they join with the overseers in making rates for the poor; but the churchwardens having distinct business of their own, usually leave the care of the poor to the overseers, though anciently they were the sole overseers of the poor. *Wood's Inst.* 98.

OVERSEWENESSE. See OVERHERNISSA.

OVERT, open.

OVERT ACT, an open act by law must be manifestly proved. 3 *Inst.* 12.

OVERT WORD, an open, plain word, not to be misunderstood.

OVERTURE, an opening; a proposal.

OVRAGES or OUVRAGES, days' works.

OVRES, acts, deeds, or works.

OWEL, equal.

OWELTY, equality.

OWLERS, persons that carried wool, &c., to the sea-side, by night, in order to be shipped off contrary to law.

OWLING, the offence of transporting wool or sheep out of the kingdom. Repealed by 5 Geo. IV., c. 107.

OXFILD, a restitution anciently made by a hundred or county for any wrong done by one that was within the same. *Lamb. Arch.* 125.

OXGANG or OXGATE, fifteen acres of land. Corrupted in the north, to *osken*. *Kelm. Domes. Illustr.*

OYER (to hear), the ancient word for assizes; also, hearing a deed read.

In all cases where a deed, &c., is pleaded with a *profert*, either by the plaintiff or defendant, the other party may have oyer of it (provided the *profert* have been necessary), and may then set it forth in his plea, if he like. Unless there have been a *profert*, oyer cannot be prayed; if a deed, therefore, be pleaded without *profert*, the other party should demur specially for the want of it, particularly if it be essential to his plea, &c., that the deed should be set forth. It is usually craved of bonds and other specialties, letters of administration, and policies of insurance; but not of a deed operating under the Statute of Uses, nor of private acts of Parliament, letters patent, or other records. Oyer cannot be demanded after a plea in abatement. It must be demanded before the time of pleading has expired, or before the time granted for pleading by a Judge's order. The defendant is entitled to as many days for pleading after the oyer has been given as he had yet unexpired at the time of demanding it. The demand is complied with by exhibiting, and, if required, by making a copy of the deed, &c., to be paid for by the party demanding it. It is error to refuse oyer when it ought to be granted. It is optional with the party whether he set it forth in his plea or not. If the defendant, after craving oyer of a deed, omit to insert it at the head of his plea, the plaintiff, on making up the issue or demurrer book may, if he think fit, insert it for him; but the costs of such insertion shall be in the discretion of the taxing officer. *R. H., 2 Wm. IV., r. 44.*

OYER DE RECORD, a petition made in court that the Judges, for better proof sake, will hear or look upon any record.

OYER AND TERMINER, a commission directed to the Judges and other gentlemen of the county to which it is issued, by virtue whereof they have power to hear and determine treasons, and all manner of felonies and trespasses. *Terminer* is sometimes written *determiner*.

When any sudden insurrection takes place, or any public outrage is committed, which requires speedy reformation, or there is a press of business, then a special commission is immediately granted.

OYER AND TERMINER, *courts of*, and *general gaol delivery*, tribunals held before the Queen's commissioners, among whom are usually two Judges of the superior courts of law at Westminster, twice in every year in every county of the kingdom, the metropolis and its vicinity excepted. See *Assize*.

OYEZ (hear ye), the introduction to any proclamation or advertisement given by the public criers both in England and Scotland. It is most unmeaningly pronounced, *oh / yes /*

P

PAAGE [old Fr., from the low Lat. *paagium*], a toll for passage through the grounds of another person. *Obsolete*.

PACARE, to pay.

PACATIO, payment. *Mat. Par. 1248.*

PACEATUR (let him be free or discharged).

Paci sunt maxime contraria, vis et injuria. Co. Lit. 161.—(Force and injury are greatly contrary to peace.)

Pacta privata juri publico derogare non possunt. 7 Co. 23.—(Private compacts cannot derogate from public right.)

PACKAGE, SCAVAGE, BAILLAGE, AND PORTAGE, duties charged in the port of London on the goods imported and exported by aliens, or by denizens, being the sons of aliens.

The act 3 & 4 Wm. IV., c. 66, authorised the Lords of the Treasury to purchase these duties from the city. This was done at an expense of about 140,000*l.*, and the duties were abolished. *McCulloch's Comm. Dict.*

PACK OF WOOL, a horse-load, which consists of 17 stone and 2 pounds, or 240 pounds weight. *Fleta, l. 2, c. 12.*

PACT [*pacte*, Fr., *pactum*, Lat.], a contract, bargain, covenant.

PACTION [*pactio*, Lat.], a bargain or covenant.

PACTIONAL, by way of bargain or covenant.

PACTITIOUS, settled by covenant.

Pacto aliquod licitum est, quod sine pacto non admittitur. Co. Lit. 166.—(By compact, something is permitted which, without compact, was not admitted.)

PADDER, a robber, a foot highwayman.

PADDOCK [*panne*, Sax., a park], a small inclosure for deer or other animals.

PAGARCHUS [*pagus*, village, and *ἀρχή*, Gk., command], a petty magistrate of a *pagus* or little district in the country.

PAGUS, a county.

Pagus, derived from the Doric *παγὰ*, a fount; because villages were originally formed round springs of water. "Religion did first take place in cities, and in that respect was a cause why the name of *Pagans*, which properly signifieth a country people, came to be used in common speech for the same that infidels and unbelievers were."

Hooker, E. P. v. 80.

PAINE or PEINE, FORT ET DURE [*pæna fortes et dura*, Lat.], a special punishment formerly inflicted on those who, being arraigned of felony, refused to put themselves on the ordinary trial, but stubbornly stood mute. It was vulgarly called "pressing to death." *Reeves's Eng. Law, vol. ii. 134.*

PAINS AND PENALTIES, acts of Parliament to attain particular persons of treason or felony, or to inflict pains and penalties beyond or contrary to the common law, to serve a special purpose. They are in fact new laws, made *pro re nata*.

PAIS, a county; the people out of whom a jury is taken.

PAIS, conveyances in, ordinary conveyances : which see.

PAISSO, pasnage, a liberty for hogs to run in forests or woods to feed on mast. *Mon. Angl.* i. 682.

PALABROS [Ital., on my word], a kind of petty oath.

PALACE COURT, a court of legal jurisdiction, held in the borough of Southwark. The jurisdiction of this court, as well as that of the Marshalsea, is preserved by 9 & 10 Vict., c. 95. See **MARSHALSEA**.

PALAGIUM, a duty to lords of manors for exporting and importing vessels of wine in any of their ports.

PALATINE, possessing royal privileges. See **COUNTY PALATINE**.

PALING-MAN, a merchant-denizen, or one born within the English pale.

PALLIO COOPERIRE, an ancient custom, where children were born out of wedlock, and their parents afterwards intermarried; the children, together with the father and mother, stood under a cloth extended while the marriage was solemnizing, which was in the nature of adoption. By such custom the children were taken to be legitimate by the civil, but not by the common law.

PAMPHLET, a small book usually printed in the octavo form, and stitched.

It is enacted by 10 Anne, c. 19, § 113, that no person shall sell, or expose to sale, any pamphlet, without the name and place of abode of some known person by or for whom it was printed or published, written or printed thereon, under a penalty of 20*l.* and costs.

It is enacted by the 55 Geo. III., c. 185, that every book containing one whole sheet, and not exceeding eight sheets, in octavo or any lesser size, or not exceeding twelve sheets in quarto, or twenty sheets in folio, shall be deemed a pamphlet. The same act imposed a duty of 3*s.* upon each sheet of one copy of all pamphlets published. This duty, which was at once vexatious and unproductive, hardly ever yielding more than 1000*l.* or 1100*l.* a year, was repealed in 1833.

PANDECTÆ or **DIGESTA**. In the last month of the year A.D. 530, Justinian, by a constitution addressed to Tribonian, empowered him to name a commission for the purpose of forming a code out of the writings of those jurists who had enjoyed the *Jus Respondendi*, or, as it is expressed by the emperor, "*antiquorum prudentium quibus auctoritatem conscribendarum interpretandarumque legum sacratissimi principes præbuerunt.*" The compilation, however, comprises extracts from some writers of the republican period. *Const. Deo Auctore*.

Ten years were allowed for the completion of the work. The instructions of the emperor were, to select what was useful, to omit what was antiquated or superfluous, to avoid unnecessary repetitions, to get rid of contradictions, and to make such other changes as should produce out of the mass of ancient juristical writings a useful and complete body of law (*jus antiquum*).

The compilation was to be distributed into fifty books, and the books were to be subdivided into titles (*tituli*). The work was to be named *Digesta*, a Latin term, indicating an arrangement of materials; or *Pandectæ*, a Greek word, expressive of the comprehensiveness of the work. It was also declared that no commentaries should be written on this compilation, but permission was given to make *paratitla*, or references to parallel passages, with a short statement of their contents (*Const. Deo Auctore*, § 12). It was also declared, that abbreviations (*sigla*) should not be used in forming the text of the Digest. The work was completed in three years (17 Cal. Jan. 533), as appears by a constitution both in Greek and Latin, which confirmed the work, and gave to it legal authority.

The number of writers from whose works extracts were made, is thirty-nine.

Justinian's plan embraced two principal works, one of which was to be a selection from the jurists, and the other from the constitutions.

The first, the Pandect, was very appropriately intended to contain the foundation of the law; it was the first work since the date of the Twelve Tables, which in itself, and without supposing the existence of any other, might serve as a central point of the whole body of the law. It may be properly called a code, and the first complete code since the time of the Twelve Tables, though a large part of its contents is not law, but consists of dogmatic, and the investigation of particular cases. Instead of the insufficient rules of Valentinian III., the excerpts in the Pandect are taken immediately from the writings of the jurists in great numbers, and arranged according to their matter.

The code also has a more comprehensive plan than the earlier codes, since it comprises both rescripts and edicts. These two works, the Pandect and the Code, ought properly to be considered as the completion of Justinian's design. The *Institutiones* cannot be viewed as a third work; independent of both, it serves as an introduction to them, or as a manual.

Lastly, the *Novellæ* are single and subsequent additions and alterations, and it is merely an accidental circumstance that a third edition of the Code was not made at the end of Justinian's reign, which would have comprised the *Novellæ* that had a permanent application. *Savigny*, as quoted in *Smith's Dict. of Antiq.*

PANDUXATOR, a brewer. *Old Records*.

PANDUXATRIX, a woman that brews and sells ale.

PANEL [*panellum*, Lat., *paneau*, Fr., a square or panel], a little part, or rather a schedule or page, containing the names of such jurors as the sheriff returns to pass upon a trial; and empannelling a jury is nothing but the entering them into the sheriff's roll or book.

In Scotch law, the prisoner at the bar or person who takes his trial before the Court of Justiciary for some crime.

PANNAGE [*pannagium*, low Lat., *panage*, Fr.], food that swine feed on in the woods, as mast of beech, acorns, &c., which some have called *pannes*. Also, the money taken by the agistors for the food of hogs, with the mast of the royal forests. *Cowell*.

Pannagium est pastus porcorum, in nemoribus et in silvis, utputa, de glandibus, &c. 1 Buls.

7.—(A pannagium is a pasture of hogs, in woods and forests, upon acorns, and so forth.)

PANNEL. See **PANEL**.

PANNELLATION, act of empannelling a jury.

PANNIER-MAN, one who calls the members in the inns of court to dinner, &c., and provides mustard, pepper, and vinegar for the hall.

PANNUS, a garment made with skins. *Fleta*, l. 2, c. 14.

PAPER BOOK, the issues in law, &c., upon special pleadings, formerly made up by the clerk of the papers, who was an officer for that purpose, but now by the plaintiff's attorney or agent. *R. H.*, 4 Wm. IV., r. 25.

By rule of all the courts of Hilary Term, 4 Wm. IV., r. 15, four clear days before the day appointed for argument, the plaintiff in error shall deliver copies of the judgment of the court below, and of the assignment of errors, and of the pleadings thereon, to the Judges of the Queen's Bench on writs of error from the Common Pleas or Exchequer, and to the Judges of the Common Pleas on writs of error from the Queen's Bench; and the defendant in error shall deliver copies thereof to the other Judges of the Court of Exchequer Chamber, before whom the case is to be heard; and in default by either party, the other party may deliver such books as ought to have been delivered by the party making default, and the party making default shall not be heard until he shall have paid for such copies, or deposited with the clerk of the errors or the clerk of the rules in the Queen's Bench, (as the case may be) [now in any case, since the 7 Wm. IV. and 1 Vict., c. 30, one of the Masters of the court in which the original judgment was given], a sufficient sum to pay for such copies."

By rule of all the courts of Hilary Term, 4 Wm. IV., r. 17, "four clear days before the day appointed for argument, the plaintiff shall deliver copies of the demurrer-book, special case, or special verdict to the Lord Chief Justice of the Queen's Bench or Common Pleas, or Lord Chief Baron (as the case may be), and the senior Judge of the court in which the action is brought, and the defendant shall deliver copies to the other two Judges of the court, next in seniority, and in default thereof by either party, the other party may on the day following deliver such copies as ought to have been so delivered by the party making default, and the party making default shall not be heard until he shall have paid for such copies, or deposited with the clerk of the rules in the Queen's Bench and Exchequer, or the

secondary in the Common Pleas (as the case may be) [now, since 7 Wm. IV. and 1 Vict., c. 30, in either court one of the Masters], a sufficient sum to pay for such copies."

PAPER-CREDIT, property circulated by means of any written paper-obligation.

PAPER DAYS. In each of the Common Law Courts there are certain days in each term called *paper days*, because the court, on those days, hear the causes which have been entered in the paper for argument before they enter upon motions. *Chit. Arch. Prac.* 95.

PAPER-MONEY, bills of exchange, bank and promissory notes.

PAPER-OFFICE (in the palace of Whitehall), an ancient office, where all the public writings, matters of state and council, proclamations, letters, intelligences, negotiations of the Queen's ministers abroad, and generally all the papers and dispatches that pass through the offices of the Secretaries of State, are lodged and disposed in the way of library.

Also, an office or room in the Court of Queen's Bench, where the records belonging to that court are deposited: sometimes called *Paper-mill*.

PAPISM, popery.

PAPIST, one that adheres to the communion of the Pope and Church of Rome. The word seems to be considered by the Roman Catholics themselves as a nick-name of reproach, originating in their maintaining the supreme ecclesiastical, and heretofore temporal, power of the pope, *papa*.

By 18 Geo. III., c. 60; 31 Geo. III., c. 32; and 43 Geo. III., c. 30, most of the severer penalties and disabilities to which papists were formerly subject, were removed on condition of their qualifying by such oath and declaration as in those acts respectively provided; and by 10 Geo. IV., c. 7, commonly called the Catholic Emancipation Act, Roman Catholics were restored in general to the full enjoyment of all civil rights, except that of holding ecclesiastical offices and certain high appointments in the state. By the provisions of this statute all enactments by which any declaration against transubstantiation, the invocation of the saints, or the sacrifice of the mass, were required from any persons, as qualifications for sitting in Parliament or otherwise, are repealed; and persons professing the Roman Catholic religion upon taking and subscribing an oath prescribed by the act (which comprises, among other things, the abjuration of any intention to subvert the church establishment, and an oath never to exercise any privilege to disturb or weaken the Protestant religion or government) are relieved from all disabilities and penalties whatever, and made competent to sit in Parliament, to vote at Parliamentary elections, and to be members of lay corporations. They are also qualified, upon taking and subscribing the same oath (which is to stand in place of all other tests whatever), to exercise any franchise or civil right except that of presenting to

benefices, and to hold any office, with the exception of the following: the office of guardian, justice, or regent of the United Kingdom; of lord high chancellor or commissioner or keeper of the Great Seal; of lord lieutenant, deputy, or chief governor of Ireland; of high commissioner of general assembly of Scotland; or any office in the church or the ecclesiastical courts, or in the universities, colleges, and public schools.

Doubts, however, having been still entertained as to the right of Roman Catholic subjects in England to acquire and hold property for the support of religious worship, and for educational or charitable purposes, it was provided by the 2 & 3 Wm. IV., c. 115, that they should be subject, in this particular, to the same laws as were applicable to Protestant dissenters; and the 7 & 8 Vict., c. 102, repealed all such enactments as still remained in force, however fallen into oblivion, calculated in any manner to oppress the Roman Catholic subjects of the realm, on account of their religious persuasion.

PAR, state of equality; equal value.

PARACHRONISM [παρά, Gk., besides; and χρόνος, time], error in the computation of time.

PARACIUM, the tenure between parceners, viz., that which the youngest owes to the eldest, without homage or service. *Domesday*.

PARAGE, an equality of blood or dignity; but more especially of land, in the partition of an inheritance between co-heirs: more properly, however, an equality of condition among nobles, or persons holding nobly. Thus, when a fief is divided among brothers, in this case, the younger hold their part of the elder by parage, *i. e.*, without any homage or service.

PARALOGY [παρά, Gk., against; and λόγος, reason], false reasoning.

PARAMOUNT, superior; having the highest jurisdiction, as lord paramount, the supreme lord of the fee.

PARAPHERNALIA [παρά, Gk., beyond; and φερή, dower], something reserved to a wife over and above her dower or dotal portion. It includes all the personal apparel and ornaments of the wife which she possesses, and which are suitable to her rank and condition of life.

At law, the husband, in his lifetime, may dispose of her paraphernalia, excepting, indeed, her necessary apparel; and they are liable to the claims of creditors, with the like exception. But the wife is entitled to her paraphernalia against his representatives; for the husband cannot, by will, dispose of them, or leave them to his representatives.

Where the husband, either before or after marriage, gives to his wife articles of paraphernal nature, they are not treated as absolute gifts to her as her own separate property; for if they were, she might dispose of them at any time, and he could not appropriate them to his own use. But they

are deemed as, technically, paraphernalia, to be worn by the wife as ornaments of her person, and so to be deemed gifts *sub modo* only. But if the like articles were bestowed upon her by a father, or by a relative, or even by a stranger, before or after marriage, they would be deemed absolute gifts to her separate use; and then, if received with the husband's consent, he could not, nor could his creditors dispose of them, any more than they could of any other property received and held to her separate use. 2 *Story's Eq. Jurisp.* 554; 2 *Step. Com.* 302.

PARASCEVE, the sixth day of the last week in Lent, popularly called Good Friday. It is a *dies non juridicus*.

PARASITUS, a domestic servant. *Blount*.

PARASYNEXIS, a conventicle, or unlawful meeting. *Civil Law Term*.

PARAVAIL [*per*, Fr., and *avayler*, to dismiss], the lowest tenant of a fee, or he who is immediate tenant to one who holds over of another.

PARCELLA TERRÆ (a parcel of land).

PARCEL MAKERS, two officers in the Exchequer, that formerly made the parcels of the escheators' accounts, wherein they charged them with every thing they have levied for the sovereign's use within the time of their being in office, and delivered the same to the auditors, to make up their accounts therewith. *Prac. Exch.* 99.

PARCELS, a description of property, formally set forth in a conveyance, together with the boundaries thereof, in order to its easy identification.

PARCELS, *bill of*, an account of the items composing a parcel or package of goods, transmitted with them to the purchaser.

PARCENERS. See **COPARCENARY**.

PARCENARY, the tenure of lands by parceners.

PARCO FRACTO, a writ against him who violently broke a pound, and took away beasts which were lawfully impounded. *Reg. Orig.* 166.

PARDON, forgiveness of a crime; remission of punishment.

The pardoning of criminals is the peculiar prerogative of the sovereign.

The Queen may pardon all offences merely against the Crown and the public, excepting, 1. That to preserve the liberty of the subject, the committing any man to prison out of the realm, is, by the *Habens Corpus Act*, 31 Car. II., c. 2, made a *præmunire*, unpardonable even by the Crown. Nor, 2. Can the Queen pardon where private justice is principally concerned in the prosecution of offenders, though, by the *Larceny Act*, 7 & 8 Geo. IV., c. 29, § 69, she may extend her mercy to any person imprisoned by virtue of that act, even when imprisoned for non-payment of money to some party other than the Crown. But she cannot pardon a common nuisance while it remains unredressed, or so as to prevent an abatement of it; though afterwards she may remit the fine. Neither can the Queen pardon an offence

against a popular or penal statute after information brought; for thereby the informer has acquired a private property in his part of the penalty. By 12 & 13 Wm. III., c. 2, no pardon, under the Great Seal of England, shall be pleadable to an impeachment by the Commons in Parliament. But after the impeachment has been solemnly heard and determined, the prerogative of pardon may be extended to the person impeached.

As to the manner of pardoning, it is enacted by 7 & 8 Geo. IV., c. 28, § 13, that where the King's Majesty shall be pleased to extend his royal mercy to any offender convicted of any felony punishable with death or otherwise, and by warrant under his royal sign-manual, countersigned by one of his principal secretaries of state, shall grant to such offender either a free or a conditional pardon; the discharge of such offender out of custody, in the case of a free pardon, and the performance of the condition in the case of a conditional pardon, shall have the effect of a pardon under the Great Seal for such offender as to the felony for which such pardon shall be granted; subject, however, to a proviso, that they shall have no effect to prevent or mitigate the punishment to which the offender might otherwise be lawfully sentenced on a subsequent conviction for any felony committed after such pardon.

By 9 Geo. IV., c. 32, § 3, reciting that it is expedient to prevent all doubts respecting the civil rights of persons convicted of felonies not capital, who have undergone the punishment to which they were adjudged, it is enacted that where any offender shall be convicted of any felony not punishable with death, and shall endure the punishment to which he has been adjudged for the same, the punishment so endured shall have the like effects and consequences as a pardon under the Great Seal, as to the felony whereof the offender was so convicted; subject, however, to a proviso that it shall not prevent or mitigate any punishment to which he might otherwise be lawfully sentenced on a subsequent conviction for any other felony.

It is a general rule that whenever it may reasonably be presumed that the Queen has been deceived, the pardon is void. A pardon of all felonies will not pardon a conviction or attainder of felony, but the conviction and attainder must be particularly mentioned; and a pardon of felonies will not include piracy, for that is no felony punishable at the common law. A pardon shall be taken most beneficially for the subject, and most strongly against the sovereign. A pardon may also be conditional, that is, the Queen may extend her mercy upon what terms she pleases, and may annex to her bounty a condition either precedent or subsequent, on the performance whereof the validity of the pardon will depend, and this by the common law; which prerogative is daily exercised in the pardon of felons, on

condition of being confined to hard labour for a stated time, or of transportation to some foreign country for life or for a term of years.

A pardon by act of Parliament is more beneficial than by the Queen's charter; for a man is not bound to plead it, but the court must, *ex officio*, take notice of it; neither can he lose the benefit of it by his own *laches* or negligence, as he may of the Queen's charter of pardon. The Queen's charter of pardon must be specially pleaded, and that at a proper time. It may be pleaded in bar as at once destroying the end and purpose of the indictment, by remitting that punishment which the prosecution is calculated to inflict. There is one advantage that attends pleading a pardon in bar or in arrest of judgment, *before* sentence is past, which gives it by much the preference to pleading it *after* sentence or attainder. This is, that by stopping the judgment, it stops the attainder, and prevents the corruption of blood which follows in certain cases, on conviction, and which cannot afterwards be purged except by act of Parliament. The 5 & 6 W. & M., c. 13, gives the Judges of the court a discretionary power to bind the criminal pleading such pardon to his good behaviour, with two sureties, for any term not exceeding seven years.

The effect of a pardon is to make the offender a new man, to acquit him of all corporal penalties and forfeitures annexed to that offence for which he obtains the pardon, and not so much to restore his former, as to give him new credit and capacity. A pardon of treason or felony, even after conviction or attainder, will enable a person to sustain an action of slander for calling him a traitor or felon. A pardon, prior to conviction, will prevent any forfeiture either of lands or goods, though, on the other hand, it will not, without express words of restitution, divest either the Crown or a subject of any interest already vested in either by force of an attainder or conviction precedent. See CORRUPTION OF BLOOD, and APPROVER.

Pardon, in the canon law, extends beyond the affairs of this world, being an indulgence which the pope grants to supposed penitents for remission of the pains of purgatory, which they have merited for the punishment of their sins.

PARDONERS, persons who carried about the pope's indulgences, and sold them to any who would buy them.

Parens est nomen generale ad omne genus cognationis. Co. Lit. 80.—(Parent is a name general to every kind of relationship.)

PARENS PATRIÆ, the Sovereign, by virtue of which she has a kind of guardianship over various classes of persons, who, from their legal disability, stand in need of protection, such as infants, idiots, and lunatics.

PARENT AND CHILD, an universal and natural relationship, derived from the relation of husband and wife.

The duties of parents consist in three particulars—the maintenance of their children, their protection, and education.

Very slight circumstances will be sufficient to raise the presumption of a contract on the part of a father to pay for necessities provided to his infant child. The poor laws compel maintenance, for the father and mother, grandfather and grandmother, or children of poor persons not able to work, shall maintain them at their own charges, if of sufficient ability, according as the quarter sessions or two justices in petty sessions shall direct; and if a parent run away and leave his children, the churchwardens and overseers of the parish shall seize his rents, goods, and chattels, and dispose of them towards their relief. See **POOR LAWS**.

No person is bound to provide a maintenance for his issue, unless where the children are impotent and unable to work, either through infancy, disease, or accident; and then is only obliged to find them with necessities. Our law has made no provision to prevent the disinheriting of children.

The protection of children is a natural duty, and rather permitted than enjoined by our municipal laws. Their education also is rather a moral than a legal duty.

A father is, generally speaking, guardian to his infant children; and it is understood, that though this right ceases, in some instances and for some purposes, at fourteen, he is always entitled, in his paternal capacity, to the control of their persons, until the age of twenty-one; and if the possession of them during this period be withheld from him, he may in general regain it by writ of *habeas corpus*. By 9 Geo. IV., c. 31, all persons who by force or fraud take or entice away or detain any child under the age of ten, with intent either to deprive its parent or any other person having lawful charge of it, of the possession thereof, or to steal any article about its person, shall incur the penalties of felony.

A father may correct his infant child in a reasonable manner; for this is for the benefit of his education. His consent to the marriage of his child, if under age, is also required. 4 Geo. IV., c. 76; 6 & 7 Wm. IV., c. 85.

As to property, where the child happens to have any real estate, independent of his father, the latter, in capacity of guardian, has generally the charge of it, and may receive the rents and profits during the minority, subject to the liability to account for them on the attainment of full age.

With respect to the mother, she has no legal power over the child in the father's lifetime, at least as against the father, except that by the 2 & 3 Vict., c. 54; where the child is within seven years, the Lord Chancellor or Master of the Rolls may, upon the mother's petition (unless she has been adjudged adulteress), make an order on the father or testamentary guardian to deliver it into her custody. After the father's death,

she is entitled to the custody of the infant until twenty-one; and must give her consent, if unmarried, to the infant's marriage; but she cannot appoint a guardian by will.

The law has not deemed it necessary to make much provision on the subject of filial obligations. But it is held that a child is justified in defending the person, and maintaining the cause or suit of a parent, as a parent is justified in performing the same duties for a child. 2 *Step. Com.* 314.

PARENTELA, *de parentela se tollere*, signified a renunciation of one's kindred and family. This was, according to ancient custom, done in open court, before the Judge, and in the presence of twelve men, who made oath that they believed it was done for a just cause. We read of it in the laws of Henry I. After such abjuration, the person was incapable of inheriting anything from any of his relations, &c. *Encyc. Lond.*

PARENTICIDE [*parens*, Lat., a father, and *cædo*, to kill], one who murders a parent.

PARES, a person's peers or equals; as the jury for trial of causes, who were originally the vassals or tenants of the lord, being the equals or peers of the parties litigant; and, as the lords' vassals judged each other in the lords' courts, so the sovereign's vassals, or the lords themselves, judged each other in the sovereign's courts. 3 *Bl. Com.* 349.

Paria copulantur paribus. Bacon.—(Like things unite with like.)

Paribus sententiis reus absolvitur. 4 *Inst.* 64.—(Where the opinions are equal, a defendant is acquitted.)

Par in parem imperium non habet. Jenk. Cent. 174.—(An equal has no power over an equal.)

PARISH [*parochia*, low Lat., *paroisse*, Fr., from *παροικία*, Gk., habitation], the particular charge of a secular priest. It is that circuit of ground which is committed to the charge of one parson or vicar or other minister having permanent cure of souls therein. 1 *Step. Com.* 108.

PARISH APPRENTICES, persons who are bound out by the overseers of parishes. The children of poor persons may be apprenticed out by the overseers, with consent of two justices, till twenty-one years of age, to such persons as are thought fitting; who are also compellable to take them. 4 & 5 Wm. IV., c. 76, §§ 15, 61.

PARISH CLERK. The office of parish clerk is one of extreme venerableness and antiquity; next in dignity to the clergy, says Leland; semi-ecclesiastical, according to Camden. Witty Fuller likens him in his Church History, to the bat—half-bird, half-beast—yet so as there is more in him of the former than of the latter; his clergy wings outweigh the laic or mouse part of him. He is the mouthpiece of the congregation, says Hooker; mouth of mouths, according to Bishop Bull; the connecting link between the minister and people; cousin, twice removed, to the vicar, says another; note, that the curate is betwixt. Bellweather to

the flock, says Bishop Andrews, speaking it in honour. Spelman doubts whether he is not entitled to a portion of the lesser tithes—say a tenth. From all which expressions, though some of them seem run up into a height of metaphor and allegory greater peradventure than the matter soberly considered will bear, we may yet gather in what kind of estimation antiquity has held the function. *Encyc. Lond.*

He is generally appointed by the incumbent, but by custom may be chosen by the inhabitants; his appointment may be by word of mouth only; and his remuneration depends altogether upon the custom of the particular parish. 58 Geo. III., c. 45; 59 Geo. III., c. 134. He may be suspended or removed by the archdeacon for misconduct or neglect. 7 & 8 Vict., c. 59.

The Company of Parish-clerks is the most ancient in the city of London; yet they stand at the bottom of the list, and have neither livery nor the privilege of making their members free of the city.

PARISH OFFICERS, churchwardens, overseers, and constables.

PARISH PRIEST, the parson; a minister who holds a parish as a benefice. If the predial tithes are appropriated, he is called *rector*; if impropriated, *vicar*.

PARISH REGISTERS. See **BILLS OF MORTALITY**.

PARISHIONER, one that belongs to a parish.

Parishioners are a body politic for many purposes; as to vote at a vestry if they pay scot and lot; and they have a sole right to raise taxes for their own relief, without the interposition of any superior court; may make bye-laws to mend the highway, and to make banks to keep out the sea, and for repairing the church, and making a bridge, &c., or any such thing, for the public good. *Encyc. Lond.*

PARITOR [for *apparitor*], a beadle; a summoner of the courts of civil law.

Parium eadem est ratio, idem jus.—(Of things equal, the reason and law is the same.)

PARK [*parcus*, Lat., from *parco*, to spare], a place of privilege for wild beasts of venery, and also for other wild beasts that are beasts of the forest and of the chase; and those wild beasts are to have a firm place and protection there, so that no man may hurt or chase them within the park, without license of the owner.

A park differs from a forest, in that, as Compton observes, a subject may hold a park by prescription or royal grant, which he cannot do with respect to a forest. It differs from a chase also, because a park must be enclosed; if it lie open, it is a good cause of seizing it into the sovereign's hands, as a free chase may be if it lie enclosed.

To a park three things are required:—1st, a grant thereof; 2d, inclosure by pale, wall, or hedge; 3d, beasts of a park, such as buck, doe, &c. *Cro. Car.* 59.

PARK-BOTE, to be quit of enclosing a park or any part thereof.

PARKER, a park-keeper.

PARKHURST PRISON, established in the Isle of Wight for the confinement and correction of young offenders, male or female, as well those under sentence of transportation as those under sentence of imprisonment. The rules for this prison are to be made by one of the Principal Secretaries of State, and afterwards laid before Parliament, and they may include the infliction of corporal punishment on all such offenders. By the same authority a governor, chaplain, surgeon, matron, and other necessary officers are to be appointed. 3 *Step. Com.* 255.

PARLIAMENT, the *Imperial*, the legislature of the United Kingdom of Great Britain and Ireland, consisting of the Queen, the lords spiritual and temporal, and the knights, citizens, and burgesses.

The word is generally considered to be derived from the French, *parler*, to speak. "It was first applied," says Blackstone, "to general assemblies of the states, under Louis VII., in France, about the middle of the twelfth century." The earliest mention of it in the statutes is in the preamble to the statute of Westminster 1st, A.D. 1272.

The origin of any ancient institution must be difficult to trace, when, in the course of time, it has undergone great changes; and few subjects have afforded to antiquaries more cause for learned research and ingenious conjecture than the growth of our Parliament into the form which it had assumed when authentic records of its existence and constitution are to be found. Great councils of the nation existed in England both under the Saxons and Normans, and appear to have been common among all the nations of the north of Europe. They were called by the Saxons *micel-synoth*, or great council; *micel-gemote*, or great meeting; and *wittena-gemote*, meeting of wise men, by the last of which they are now most familiarly known. There appear to have been *wittena-gemotes* in each of the kingdoms composing the Saxon Heptarchy, and these, after the union of the kingdoms, became united into one great assembly or council.

The constitution of these councils cannot be known with any certainty, and there has been much controversy on the subject, and especially as to the share of authority enjoyed by the people. Different periods have been assigned for their admittance into the legislature. Coke, Spelman, Camden, and Prynne, agree that the commons formed part of the great synods or councils before the Conquest, but how they were summoned, and what degree of power they possessed, is a matter of doubt and obscurity. Under the Saxon kings, the forms of local government were undoubtedly popular. The *shire-gemote* was a kind of county Parliament at which the alderman or earl of the shire (being himself elected to that office by the freeholders) presided, with the bishop, the *shire-gerieve*, or sheriff,

and the assessors appointed to assist their deliberations upon points of law. A *shire-gemote* was held twice a-year in every county, when the magistrates, thanes, abbots, with all the clergy and landholders, were obliged to be present. A variety of business was conducted, but the proceedings of these assemblies generally partook more of the character of a court of justice than of a legislative body. That the *wittena-gemote*, or national council, was of an equally popular constitution with the *shire-gemote* is not so certain. If the smaller proprietors of land were not actually disqualified by law from taking part in the proceedings, yet their poverty, and the distance of the council from their homes, must generally have prevented them from attending. It has been conjectured that they were represented by their tithing-men, and the inhabitants of towns by their chief magistrates; but no system of political representation can be traced back to that time. *Squire on the English Constitution*, pp. 120, 244; *Henry's History of England*, vol. iii., p. 372. In the absence of any such trace, however, the late Mr. Sharon Turner says, that "after many years' consideration of the question, he is inclined to believe that the Anglo-Saxon *wittena-gemote* very much resembled our present Parliament in the orders and persons that composed it, and that the members who attended as representatives were chosen by classes analogous to those who now possess the elective franchise." *History of the Anglo-Saxons*, vol. iii., p. 180. He considers it "incumbent on the historical antiquary to show, not when the people acceded to the *wittena-gemotes*, but when, if ever, they were divested of the right of attending them," as the German national councils, from which this Saxon institution derived its origin, were attended by all the people; and he argues that "the total absence of any document or date of the origin of the election of representatives by the freeholders of counties is the strongest proof we can have that the custom has been immemorial, and long preceded the Norman Conquest. The facts that such representatives have been called knights of the shire, and that milites, or an order like those afterwards termed knights, were part of the *wittena-gemote*, befriended this deduction." *Ib.* p. 184. As there are no records which can be held as conclusive upon this point of history, we must be satisfied with conjecture, and the liberal character of the other Saxon institutions inclines us to infer that whether there was representation or not, the commonalty had a share in the government.

That we are indebted to our Saxon ancestors for the germs of our free institutions, there can be no doubt, though we cannot trace their growth so distinctly as we could wish. That the people were frequently present at the deliberations of the *wittena-gemote*, and that the authority of their name was used, appears from many records, but

whether as witnesses (in which capacity they are sometimes spoken of), or because their presence was necessary to give effect to laws, is not so clear. In the reign of Ethelwolf, A. D. 855, a great council was held at Winchester, in which a tenth of the whole nation was given to the church by "the king, the barons, and the people, in an infinite multitude," but the nobles only signed the law. *Ingulf*, p. 363. A "copious multitude of people, with many knights," is also said to have attended a similar council in the fifth year of the reign of King Canute, but it does not appear that the people took any part in the proceedings save as spectators. In Edward the Confessor's law, *de Apibus*, a tenth is confirmed to the church, "by the king, the barons, and the people;" but in other laws of the same king, the whole authority of the state is declared to be vested in the king, acting with the advice of his barons. The Normans were not likely to advance the pretensions of the people whom they had conquered. Theirs was an oppressive feudal government at variance with popular privileges. All rank and property was the gift of the Crown, involving military service and subordination. Spelman, in his *Treatise on Parliaments*, thus describes the political condition of the commonalty under the feudal system: "Every lord having authority over his tenant, the superior, as comprehending them all, and holding *in capite* (i. e., in chief, or direct from the king), was tied to the king to see all under his tenure to be of good government. By reason whereof, whatsoever those their lords agreed or disagreed unto in matters of the state and commonwealth, it did bind every of them their inferiors. Hence, then, it comes to pass, that in making laws of the kingdom, the common people were not consulted with, but only the barons, or those who held *in capite*, who then were called *concilium regni*." *Reliquiæ Spelmanianæ*, p. 60.

From the haughty character of the Norman barons, Mr. Turner infers the improbability of an elective Parliament having been instituted since the Conquest. Here, again, no positive evidence is supplied by our records. The laws and charters of the early Norman kings constantly mention councils of bishops, abbots, barons, and the chief persons of the kingdom, but are silent as to the commons.

In the 22nd year of Henry II., A. D. 1176, Benedict Abbas, one of our monkish annalists, relates, that about the feast of St. Paul, the king came to Northampton, and there held a great council concerning the statutes of his realm, in the presence of bishops, earls, and barons of his dominions, and with the advice of his knights and men. This is the first record which appears to include the commons in the national councils.

Forty years afterwards, the Great Charter of King John throws a light upon the constitution of Parliament, which no earlier record had done; but even there the origin

of a representative system is left in obscurity. It reserves to the city of London, and to all other cities, boroughs, and towns, and to the cinque ports, and other ports, all their ancient liberties and free customs ; but whether the summons to Parliament, which is there promised, was then first instituted, or whether it was an ancient privilege confirmed and guaranteed for the future, the words of the charter do not sufficiently explain. From this time, however, may be clearly traced the existence of a Parliament similar to that which has continued to our own days. "The main constitution of Parliament, as it now stands," says Blackstone, "was marked out so long ago as the seventeenth year of King John, A. D. 1215, in the Great Charter granted by that prince, wherein he promises to summon all archbishops, bishops, abbots, earls, and greater barons, personally, and all other tenants in chief under the Crown, by the sheriff and bailiffs, to meet at a certain place, with forty days' notice, to assess aids and scutages when necessary ; and this constitution has subsisted in fact, at least, from the year 1266, 49 Hen. III., there being still extant writs of that date to summon knights, citizens, and burgesses to Parliament." There are writs of an earlier date than that mentioned by Blackstone, in the 49 Hen. III., which involve the principle of representation, though not to the same extent. One, in the 38th year of that reign, requires the sheriff of each county to cause to come before the king's council two good and discreet knights of his county, whom the men of the county shall have chosen for this purpose, in the stead of all and each of them, to consider, along with the knights of other counties, what aid they will grant the king. 2 *Prynne's Register*, p. 23. This, however, was for a particular occasion only ; and to appear before the council is not to vote as an estate of the realm. Nevertheless, representation of some kind there existed ; and it is interesting to observe how early the people had a share in granting subsidies. Another writ, in 1261, directs the sheriffs to cause knights to repair from each county to the king at Windsor. It only remains to notice a statute passed, 15 Edw. II., 1322, which declares that "the matters to be established for the estate of the king, and of his heirs, and for the estate of the realm and of the people, should be treated, accorded, and established in Parliament by the king, and by the assent of the prelates, earls, and barons, and the commonalty of the realm, according as had been before accustomed." In reference to this statute, Mr. Hallam observes, "that it not only establishes, by a legislative declaration, the present constitution of Parliament, but recognises it as already standing upon a custom of some length of time. 1 *Const. Hist.*, p. 5.

The authority of Parliament extends over the United Kingdom, and all its colonies and foreign possessions. There are no other

limits to its power of making laws for the whole empire than those which are common to it, and to all other sovereign authority, the willingness of the people to obey, or their power to resist them. It has power to alter the constitution of the country ; for that is the constitution which the last act of Parliament has made. It may take away life by acts of attainder, and make an alien be as a natural born subject.

Parliament does not, in the ordinary course, legislate directly for the colonies. For some the Queen in council legislates, and others have legislatures of their own, and propound laws for their internal government, subject to the approval of the Queen in council, but these may afterwards be repealed or amended by statutes of the Imperial Parliament. There are some subjects, indeed, upon which Parliament, in familiar language, is said to have no right to legislate ; such, for instance, as the church ; but no one, who thinks correctly, can intend more by that expression than that it is inexpedient to make laws as to such matters.

The very prayers and services of the church are prescribed by statute. Parliament has changed the professed religion of the country, and has altered the hereditary succession to the throne. To conclude, in the words of Sir Edward Coke, the power of Parliament "is so transcendent and absolute, that it cannot be confined, either for causes or persons, within any bounds."

Custom and convenience have assigned to different branches of the legislature peculiar powers, but they are subject to any limitation, or even transference, which Parliament may think fit.

It is by the act of the sovereign alone that Parliament can be assembled.

There have been only two instances in which the lords and commons have met of their own authority, namely, previously to the restoration of King Charles II., and at the Revolution in 1688.

There is one contingency upon which the Parliament may meet without summons under the authority of an act of Parliament. It was provided by the 6 Anne, c. 7, that "in case there should be no Parliament in being at the time of the demise of the Crown, then the last preceding Parliament should immediately convene and sit at Westminster, as if the said Parliament had never been dissolved." By the 37 Geo. III., c. 127, a Parliament so revived would only continue in existence for six months, if not sooner dissolved.

As the Sovereign appoints the time and place of meeting, so also at the commencement of every session he declares to both houses the cause of summons by a speech delivered to them in the House of Lords by himself in person, or by commissioners appointed by him. Until he has done this, neither house can proceed with any business.

After the speech any business may be commenced, and the commons, in order to

assert their right to act without reference to any authority but their own, invariably read a bill a first time *pro forma*, before they take the speech into consideration.

Parliament, it has been seen, can only commence its deliberations at the time appointed by the sovereign, neither can it continue them any longer than he pleases. He may prorogue Parliament by having his command signified in his presence by the Lord Chancellor or speaker of the House of Lords to both houses, or by writ under the Great Seal, or by commission. The effect of a prorogation is at once to suspend all business until Parliament may be summoned again. Not only are the sittings of Parliament at an end, but all proceedings pending at the time, except impeachments by the Commons, are quashed.

Adjournment is solely in the power of each house respectively.

The Sovereign may also put an end to the existence of Parliament by a dissolution. He is not, however, entirely free to define the duration of a Parliament, for after seven years it ceases to exist under the statute George I., commonly known as the Septennial Act. Parliament is dissolved by proclamation after having been prorogued to a certain day.

The judicial functions of the Lords, and their right to pass bills affecting the peerage, which the Commons may not amend, are the only properties peculiar to them apart from their personal rights and privileges.

The chief powers vested in the House of Commons are those of imposing taxes, and voting money for the public service. Bills for these purposes can only originate in that house, and the Lords may not make any alterations in them, except for the correction of clerical errors.

Another important power peculiar to the Commons is that of determining all matters touching the election of their own members, and involving therein the rights of the electors.

The power of administering oaths exercised by the Lords, is not claimed by the House of Commons. They formerly endeavoured to attain the end supposed to be secured by the administration of an oath, by resorting to the authority of justices of the peace who happened to be members of their own body; but all such expedients have long since been abandoned, and witnesses guilty of falsehood are punished by the house for a breach of privilege, not being amenable to the laws regarding perjury. Election committees have power by statute to administer oaths, and witnesses giving false evidence are guilty of perjury.

Both Houses of Parliament possess various rights and privileges for the maintenance of their collective authority, and for the protection, convenience, and dignity of individual members. The power of commitment for contempt has always been exercised by both houses. The House of Lords, in addition to

the power of commitment, may impose fines. Freedom of speech is one of the privileges claimed by the Speaker on behalf of the Commons; but it has long since been confirmed as the right of both Houses of Parliament by statutes. The law presumes that everything said in Parliament is with the view to the public good, and necessary for the conduct of public business; but should the member publish his speech, he is viewed as an author only; and if it contain libellous matter, he will not be protected by the privilege of Parliament.

The persons of members are free from arrest or imprisonment in civil actions, but their property is as liable to the legal claims of all other persons as that of any private individual. Their servants do not enjoy any privilege or immunity whatever.

The privilege of freedom from arrest has always been subject to the exception of cases of "treason, felony, and surety of the peace." Peers are always free from arrest; and as regards the Commons, their privilege is generally held to exist for forty days after every prorogation, and forty days before the next appointed meeting.

Each House of Parliament is acknowledged to be the judge of its own privileges.

In the House of Lords, business may proceed when three peers are present; but forty members are required to assist in the deliberations of the lower house.

When any question arises upon which a difference of opinion is expressed, it becomes necessary to ascertain the numbers on each side. In the Lords, the parties in favour of the question are called "content," and those opposed to it "non-content." In the Commons, these parties are described as the "ayes" and "noes." When the Speaker cannot decide by the voices which party has the majority, or when his decision is disputed, a division takes place.

In addition to the power of expressing assent or dissent by a vote, peers may record their opinion, and the grounds of it, by a protest, which is entered in the journals, together with the names of all the peers who concur in it.

When matters of great interest are to be debated in the upper house, the Lords are summoned; and in the House of Commons an order is occasionally made that the house be called over, and members not attending when their names are called, are reported as defaulters, and ordered to attend on another day, when, if they are still absent, and no excuse be offered, they are sometimes committed to the custody of the serjeant-at-arms.

The business, which occupies nearly the whole attention of both houses, if we except the hearing of appeals by the Lords, and the trial of controverted elections by the Commons, is the passing of bills. *May's Imperial Parliament.* See HOUSE OF LORDS, HOUSE OF COMMONS, AND IMPEACHMENT. PARLIAMENTARY COMMITTEES, tribu-

nals which have cognizance of railway bills and bills for important undertakings, and also of election petitions.

PAROCHE, a parish.

Parochia est locus quo degit populus alicujus ecclesie. 5 Co. 67.—(A parish is a place in which the population of a certain church resides.)

PAROCHIAL, belonging to a parish.

PAROCHIAN, a parishioner.

PAROL [*parole*, Fr.], by word of mouth.

Also, the pleadings in an action were, when they were given *vind voce* in court, frequently termed the *parol*.

As to parol assignments, contracts, and conveyances, see 29 Car. II., c. 3, commonly called "The Statute of Frauds."

PAROL ARREST, any justice of the peace may, by word of mouth, authorize any one to arrest another who is guilty of a breach of the peace in his presence.

PAROL DEMURRER, abolished by 11 Geo. IV. and 1 Wm. IV., c. 47, § 10.

PAROL EVIDENCE, testimony by the mouth of the witness.

It is a general rule that oral evidence shall in no case be received as equivalent to, or as a substitute for, a written instrument, where the latter is required by law, or to give effect to a written instrument, which is defective in any particular, which by law is essential to its validity; or to contradict, alter, or vary a written instrument, either appointed by law, or by the compact of private parties, to be the appropriate and authentic memorial of the facts which it recites; for by doing so, oral testimony would be admitted in usurpation of a species of evidence decidedly superior in degree.

But parol evidence is admissible to defeat a written instrument on the ground of fraud, mistake, &c., or to apply it to its proper subject, or in some instances, as ancillary to such application, to explain the meaning of doubtful terms, or to rebut presumptions arising extrinsically. In these cases the parol evidence does not usurp the place or arrogate the authority of written evidence, but either shows that the instrument ought not to be allowed to operate at all, or is essential in order to give to the instrument its legal effect. 3 Stark. Evid. 752.

PAROLE, the promise made by a prisoner of war, when he has leave to go anywhere, of returning at a time appointed, or not to take up arms till exchanged.

PARRICIDE, one who destroys his father; one who destroys or invades any to whom he owes particular reverence: as his country or patron.

Our laws, unlike the ancient laws, distinguish in no respect between the crime of parricide or that of killing a husband, wife, or master, and the crime of simple murder.

PARSON [from *persona*, because the parson *omnium personam in ecclesia sustinet*; or from *parochianus*, the parish priest. Johnson. It was anciently written *persone*. Todd], the rector or incumbent of a parish;

one that has a parochial charge or cure of souls.

A parson has, during his life, the freehold in himself of the parsonage-house, the glebe, the tithes, and other duties. But these are sometimes appropriated, that is to say, the benefice is perpetually annexed to some spiritual corporation, either sole or aggregate, being the patron of the living, which the law esteems equally capable of providing for the service of the church as any single private clergyman. Many appropriations, however, are now in the hands of lay persons, who are usually styled, by way of distinction, lay impropriators.

In all appropriations there is generally a spiritual person attached to the same church, under the name of vicar, to whom the spiritual duty or cure of souls belongs, in the same manner as in parsonages not appropriate or rectories to the rector: and to whom, on the other hand, a certain portion of the tithes or other emoluments of the church, by way of exception out of those enjoyed by the appropriator, is assigned.

The method of becoming a parson or a vicar is much the same. To both there are, in general, four requisites necessary: holy orders, presentation, institution, and induction. A parson or vicar may cease to be so, by death, by cession, or taking another benefice, by consecration to a bishoprick, by resignation, or deprivation.

PARSONAGE, the benefice of a parish.

PARSON IMPARSONEE [*persona impersonata*], a clerk in full and complete possession of a benefice.

PARSON MORTAL, [*persona mortalis*], a rector instituted and inducted for his own life. But any collegiate or conventional body, to whom a church was for ever appropriated, was termed *persona immortalis*.

PARS RATIONABILIS, the ancient division of a man's goods into three equal parts, of which one went to his heirs or lineal descendants, another to his wife, and the third was at his own disposal; or if he died without a wife, he might then dispose of one moiety, and the other went to his children, and so *e converso*; but if he died without either wife or issue, the whole was at his own disposal. The shares of the wife and children were called their reasonable parts; and the writ *de rationabili pacto bonorum* was given to recover them. This law has been altered by imperceptible degrees, and the deceased may now by will bequeath the whole of his goods and chattels. 2 Step. Com. 227.

PARTES FINIS NIHIL HABUERUNT, &c. (the parties to the fine had nothing, &c.), an exception taken against a fine levied. 3 Rep. 88.

Partem aliquam rectè intelligere nemo potest, antequam totum, iterum atque iterum perlegerit. 3 Co. 59.—(No one can rightly understand any part until he has read the whole again and again.)

Parte quâcunque integrante sublata tollitur totum. 3 Co. 41.—(An integral part being taken away, the whole is taken away.)

PARTIAL LOSS. See **ABANDONMENT.**

PARTICEPS CRIMINIS, a partner in crime.

Participes plures sunt quasi unum corpus, in eo quod unum jus habent, et oportet quod corpus sit integrum et quod in nulla parte sit defectus. Co. Lit. 164.—(Many partners are as one body, inasmuch as they have one right, and it is necessary that the body be perfect, and that there be a defect in no part.)

Participes, quasi partis capaces, sive partem capientes, quia res inter eas est communis, ratione plurium personarum. Ibid. 146, b.—(Partners as it were, "partis capaces" or "partem capientes," because the thing is common to them, by reason of their being many persons).

PARTICULAR ESTATE, that interest which is granted out of a larger estate, which then becomes an expectancy either in reversion or remainder.

PARTICULAR LIEN, a right of retaining possession of a chattel from the owner, until a certain claim upon it be satisfied.

PARTICULAR OF BREACHES. Where the ejectment was brought for a forfeiture, the court or a Judge, upon application, will order the lessor of the plaintiff to give the defendant a particular of the covenants and breaches, &c., on which he means to insist that the defendant has forfeited his term, and that he shall not be allowed to give evidence at the trial of anything not contained in those particulars.

PARTICULAR OF OBJECTIONS TO PATENT. The act for amending the law of patents, 5 & 6 Wm. IV., c. 83, § 5, enacts, "that in any action brought against any person for infringing any letters patent, the defendant in pleading thereto shall give to the plaintiff, and in any *scire facias* to repeal such letters patent, the plaintiff shall file with his declaration, a notice of any objections on which he means to rely at the trial of such action; and no objection shall be allowed to be made in behalf of such defendant or plaintiff respectively at such trial, unless he prove the objections stated in such notice: provided always, that it shall and may be lawful for any Judge at chambers, on summons served by such defendant or plaintiff on such plaintiff or defendant respectively, to shew cause why he should not be allowed to offer other objections whereof notice shall not have been given as aforesaid, to give leave to offer such objections on such terms as to such Judge shall seem fit."

If a defendant omit to deliver the particulars with his plea on pleading, as required by the statute, the court, if they be satisfied on the merits, will grant him leave to plead *de novo*, and to deliver the objections with the new plea. *Chit. Arch. Prac.* 1031.

PARTICULAR OF PAYMENT. Where a defendant pleads payment, a plaintiff, according to a decision of the Court of Common Pleas, may obtain particulars of the payments relied upon, on an affidavit stating that he cannot safely go to trial without

them. *Ireland v. Thompson*, 4 Bing., N. C. 716.

PARTICULAR OF PREMISES, &c. A defendant, if there be any reasonable doubt as to the lands, &c., for which an ejectment was brought, may take out a summons before a Judge, and obtain an order calling upon the plaintiff to give him a bill of particulars. The court or a Judge may also order the defendant to give a particular of the premises for which he defends.

PARTICULAR OF RESIDENCE. Where the lessor of a plaintiff is unknown to a defendant, the latter may call for a particular of his residence or place of abode from the opposite attorney, and if he refuse to give it, or give a fictitious account of a person who cannot be found, the court or a Judge will stay proceedings until security be given for costs.

An attorney may in general be compelled by a court or a Judge to disclose the place of his client's residence, if the application be made in the early stage of a cause, but he cannot be compelled to disclose the place of his client's residence after verdict.

PARTICULAR OF SET-OFF. Where a defendant pleads a set-off, the plaintiff may obtain a particular of the set-off in the same cases as a defendant would be entitled to it, if the matter so set-off were declared upon; and if the defendant in such a case do not deliver a bill of particulars within the time limited in the Judge's order for that purpose, he will not be allowed to give evidence of his set-off at the trial.

PARTICULAR OF THE PLAINTIFF'S DEMAND. In cases where the declaration contains *indebitatus* counts, *R. T.*, 1 Wm. IV., r. 6, orders, "that with every declaration, if delivered, or with the notice of declaration, if filed, containing counts of *indebitatus assumpsit* or debt on simple contract, the plaintiff shall deliver full particulars of his demand under those counts, where such particulars can be comprised within three folios; and where the same cannot be comprised within three folios, he shall deliver such a statement of the nature of his claim, and the amount of the sum or balance which he claims to be due as may be comprised within that number of folios." It is further ordered, "that if any declaration or notice shall be delivered without such particulars or such statement as aforesaid, and a Judge shall afterwards order a delivery of particulars, the plaintiff shall not be allowed any costs in respect of any summons for the purpose of obtaining such order, or of the particulars he may afterwards deliver. And that a copy of the particulars and also particulars (if any) of the defendant's set-off shall be annexed by the plaintiff's attorney to every record at the time it is entered, with the Judge's marshal."

Where the declaration contains special counts, it may be laid down as a general rule, that in all actions in which the plaintiff

does not specify in the declaration the particulars of his cause of action, a Judge, upon summons, will make an order upon him to give the defendant the particulars in writing, and that all proceedings be stayed in the meanwhile.

In actions for *torts*, it is generally the practice to refuse particulars of demand, which in most cases are comprised in the declaration. But, under circumstances, a Judge will in such actions, compel a delivery of particulars, if there be an affidavit stating that the defendant does not know for what the plaintiff is proceeding.

By R. H., 2 Wm. IV., r. 47, "a summons for particulars and order thereon may be obtained by a defendant before appearance, and may be made, if the Judge think fit, without the production of any affidavit, or after declaration, and before plea pleaded." A Judge may make an order at any time before the trial. The term of pleading issuably will generally be imposed on a defendant by the order, unless expressly waived in writing by the plaintiff's attorney. The order operates as a stay of proceedings from the time of its service till the particulars have been delivered. The particulars must be explicit, and should specify items, dates, and amounts. If they be incorrect, the party who delivered them may have leave to amend them; or if not sufficiently explicit, the other party may take out a summons, and obtain an order for better particulars.

By R. H., 2 Wm. IV., r. 1, § 48, "a defendant shall be allowed the same time for pleading after the delivery of particulars under a Judge's order, which he had at the return of the summons; nevertheless judgment shall not be signed till the afternoon of the day after the delivery of the particulars, unless otherwise ordered by the Judge."

At the trial, the party who delivered the particulars will be confined in his proof to the items therein contained, but if it appear from the defendant's evidence, that he is entitled to recover for items not included in the bill, he shall recover them.

PARTICULAR TENANTS, *alienation by*, when they convey a greater estate than the law entitles them to make, a forfeiture ensures to the person in immediate remainder or reversion. As if a tenant for his own life alien by feoffment for the life of another or in tail or in fee; these being estates which either must or may last longer than his own, his creating them is not only beyond his power, and inconsistent with the nature of his interest, but is also a forfeiture of his own particular estate to him in remainder or reversion, who is entitled to enter immediately.

The same law which is thus laid down with regard to tenants for life, holds also with respect to all tenants of mere chattel interests.

This forfeiture differs materially from forfeiture by breach of condition in deed, for in that case the reversioner is in as of his former

seisin, and consequently not only the estate of the tenant himself, but all interests derived out of it (even though derived before the forfeiture) are defeated; but in case of such forfeiture by particular tenants, all legal estates by them created (as if tenant for twenty years grant a lease for fifteen), and all charges by him lawfully made on the lands, shall be good and available in law. 1 *Step. Com.* 429.

PARTIES, a number of persons concerned in any business affair; litigants.

The parties to an action at law are called in real actions demandant and tenant, and in personal actions plaintiff and defendant, and so in suits in equity, but the plaintiffs in an engrossed bill are called orators and oratrixes.

In appeals they are called appellant and respondent.

The order in which the parties to a conveyance are set out, is as follows: 1. The owner of the legal inheritance; 2. Persons having equitable or beneficial interests in the inheritance; 3. Persons possessed of chattel interests; 4. The releasee; 5. Trustees for the releasee.

In criminal causes they are the prosecutor and the prisoner or defendant.

PARTITION, the act of dividing.

PARTITION, *bill for a*, a proceeding in Chancery which resembles the action *communi dividendo* of the civil law.

Partition is of common right between parceners, joint-tenants, and tenants in common.

It is an original bill, and is filed for the purpose of obtaining the judgment of the court as to the rights of parties, and the proportions to which they are entitled under a partition, and afterwards to procure a division of such proportions. Whatever is capable of division may be the subject of partition.

The decree directs a partition and a commission to issue to divide the estate, and empowers the commissioners to examine witnesses, and reserves further directions and costs until the return of the commission. Each party appearing by a separate solicitor is entitled to name four persons as commissioners, but to save expence it is usual for the parties to agree upon two persons to act as commissioners, who are generally either surveyors, engineers, or other scientific persons according to the nature of the property to be divided.

The commission is made returnable immediately, and unlike a commission to examine witnesses, it may be executed in or within twenty miles of London. Neither the commissioners nor their clerks are sworn. They allot the estates and make their return in nature of a report, which is accompanied by a plan of the estate drawn on parchment or vellum.

Every part of the estate needs not be divided. If there be three houses, it would not be right to divide every house, for that would be to spoil them; but some recom-

pense is to be made, either by a sum of money or rent for owelty of partition to those that have the houses of least value.

The party issuing the commission, moves after its return to confirm it by orders nisi and absolute, and the cause is set down for hearing on certificate, and brought on in the usual way, and an order is made for a conveyance of the estates as allotted, according to the certificate of the commissioners.

The costs of issuing, executing, and confirming the commission are borne by the parties in proportion to the value of their respective interests, but no costs of the subsequent proceedings are allowed.

By 41 Geo. III., c. 109, § 16, it is enacted, that it shall be lawful for the commissioners in inclosure acts, upon the request in writing of any joint tenants, coparceners, or tenants in common, or any or either of them, or of the husbands, guardians, trustees, committees, or attornies of such as are under coverture, minors, lunatics, or under any other incapacity, or absent beyond seas to make partition or division of the estates, and allotments to such of the said owners or proprietors who shall be entitled to the same as joint-tenants, coparceners, or tenants in common, and to allot the same accordingly in severalty.

PARTITION, *deed of*, a primary or original conveyance between two or more joint-tenants, coparceners, or tenants in common, where they agree to divide the lands held among them in severalty, each taking a distinct part. Here, as they all hold *pro indiviso* or promiscuously, it is necessary that they all mutually convey and assure to each other the several estates, which they are to take and enjoy separately. The partition must now be by deed, and it is not to imply any condition in law. 8 & 9 Vict., c. 106, §§ 4, 5.

In Kent, where the land is of gavelkind tenure, they call these partitions *shifting*, from the Saxon, *shiftan*, to divide; *hercissere*, Lat.

PARTITION, *writ of*, abolished by 3 & 4 Wm. IV., c. 27, § 36.

PARTNER, partaker, sharer; one who has part in anything; associate.

PARTNERSHIP, in its comprehensive sense, an agreement, voluntarily entered into by two or more persons, to unite their capital, labour, and skill, all, or either of them, in the advancement and protection of fair and open trade, or of any other lawful purpose, dividing proportionably among themselves the profit or loss arising therefrom.

Every person can contract a partnership. Married women, however, are legally incapable of this contract, and although they are frequently entitled to shares in banking houses and other mercantile concerns, under positive covenants, their husbands become partners in their stead. And an infant partner will be entitled to all the benefits, although not liable for the losses, if he avail himself of his minority; but if, on attaining

majority, he do not disaffirm the partnership, he is responsible on contracts subsequently made by the firm.

Partnerships are either public or private. Public partnerships are usually denominated companies or societies. They consist of a large number, definite or indefinite, of joint undertakers, who have joined themselves to carry on some important matter. Some of them are incorporated by letters patent, as the East India Company, or by act of Parliament, as the Bank of England, while others are unincorporated, as most of the fire and life insurance companies, and are, in fact, ordinary partnerships, the laws respecting which are the same. They usually, however, divide their capital into shares, each partner holding one or more of them up to a certain restricted number, transferable under certain regulations; the business is intrusted to officers, generally under the superintendence of directors, elected from the general body, for whose transactions the whole company is responsible.

The Queen can charter a society, or public company, for the advantage of trade, but not for a total restraint thereof. A royal charter is necessary to enable a company to hold lands, to have a common seal, and to enjoy the other privileges of a corporation. Trading companies sometimes obtain acts of Parliament, which confer exclusive privileges, not grantable, according to the principles of the common law, by the Queen's charter. A charter is sometimes procured to limit the risk of the partners, for when societies are incorporated, the members are liable to the extent of their shares only, but when unincorporated, their liability is unlimited.

The public incorporated trading companies are not partnerships, within the legal principles governing those privately and voluntarily formed by individuals. In such public companies, whose trade is carried on under the corporate name, the members, as such, are not subject to the bankrupt laws, except in the case of railway companies, under 9 & 10 Vict., c. 28; nor are they liable in their individual capacities; nor the one for the debts or engagements of the others; in short, they are only liable upon the trade, and contracts carried on and made in the corporate character, to the extent of their respective share or interest in the joint stock.

Private partnerships are contracted by the mere consent of the parties, no charter or license being necessary. Consent may be expressly testified by articles of copartnership, or positive agreement; or may be implied from the acts and conduct of the parties, which is as effective as one that is express. And persons having a mutual interest in the profits of any business carried on by them, or, appearing ostensibly as joint traders, are to be recognised and treated as partners by the world, whatever may be the nature of the agreement under which they act, or whatever motive or inducement may prompt them to such an exhibition.

It is so essentially necessary that the parties exercise their choice freely and voluntarily, that the joint donees, or joint legatees, of one and the same thing, or those chancing, through other causes, to hold something undivided between them, to be possessed in common, without any mutual agreement, cannot be treated as partners, for they hold not by force of their own free election; nor can the executors and representatives of deceased partners, in their representative characters, be deemed partners: a community of interest, however, exists between them and the surviving partners, until the affairs of the concern are wound up. And one partner cannot introduce a stranger into the concern as a partner, without the consent of the rest, although he has a right to charge his own undivided interest to any extent he pleases in favour of such stranger.

A partnership may be limited to a particular transaction or branch of business, without comprehending all the adventures in which any partner may have embarked. And where this limitation is distinctly defined, and in the absence of any power, expressed or implied, enabling a part of the firm to bind the whole to the responsibility of any new project, it is not competent for any short of the whole partnership, to embark the firm in any undertaking not contemplated by the original contract. Each partner has a right to hold his copartners to the specified purposes of their union, whilst the partnership continues, and not to rest upon indemnities with respect to what he has not contracted to engage in, and such dissatisfied partner cannot be compelled to part with his shares, although he may sell them for double what he originally gave for them; his principal reason for keeping them may be that the partnership concern should be carried on according to the contract. The original contract, and the loss which his partners would suffer by a dissolution, is his security that it shall be so carried on for him and them beneficially, and with augmented improvement in the value of his and their shares.

Articles of partnership are most usually entered into by the partners at the time of their junction, by the terms and stipulations of which the concern is regulated, and the rights, duties, and obligations of the partners, *inter se*, defined and enforced; and such terms, &c., cannot be impeached unless they interfere with or contravene any rule or principle of law.

In the absence of any express agreement, the partnership is regulated by the contract implied by law from the relation of the parties. And where a partnership is constituted by the mere act of trading jointly, each person so trading, although liable to creditors for the whole amount of the losses, is only responsible, *inter se*, for his own proportion of them, and each will be considered, as to the profits, as equally interested, unless the contrary appear.

Partners are ordinarily divided as follows: 1, ostensible partners; 2, nominal partners; 3, dormant partners, which see.

At law there are several actions which it is competent to a partner to bring against persons who are jointly engaged with him in trade: account, covenant, assumpsit, and trover are severally adapted to the adjustment of partnership differences. Besides the legal remedies, relief is, in most cases, of partnership dissensions, administered in a court of equity.

A dissolution of a partnership may take place,

1. By the act, or agreement, or consent of the parties, including all cases where the partnership is merely at will, or is for a prescribed period, which expires by efflux of time or otherwise, according to its own limitation, or is voluntarily dissolved by mutual consent within the prescribed or limited period.

2. By the decree of a court of equity, which may be from

(a) Causes arising subsequently to the formation of the contract, founded upon the alleged misconduct, or fraud, or violation of duty of one partner, or, from

(b) Causes arising subsequently to the formation of the contract, where no blame, laches, or impropriety of conduct necessarily attaches to any of the partners, as ill health, sudden incapacity, insanity.

3. By mere operation of law; as

(a) By the change of the state or condition of one or more of the partners.

(b) By the transfer of the property of one or more of the partners by their own act or by the act of the law.

(c) By the bankruptcy and insolvency of one or more of the partners.

(d) By a public war between the countries of which the partners are respectively subjects.

(e) By the death of one or more of the partners. Consult *Collyer, Gow, or Story on "Partnership."*

PARTNERSHIP PROPERTY. There is not any difference whether the partnership property, held for the purposes of the trade or business, consists of personal or movable property or of real or immovable property, or of both, so far as their ultimate rights and interests are concerned. It is true, that at law, real or immovable property is deemed to belong to the person in whose name the title by conveyance stands. If it is in the name of a stranger, or of one partner only, he is deemed the sole owner at law; if it is in the names of all the partners, or of several strangers, they are deemed joint-tenants, or tenants in common, according to the true interpretation of the terms of the conveyance. But, however the title may stand at law, or in whose name or names soever it may be, the real estate belonging to the partnership will in equity be treated as belonging to the partnership, like its personal funds, and disposable and distributable

accordingly; and the parties in whose names it stands as owners of the legal title will be held to be trustees of the partnership, and accountable accordingly to the partners, according to their several shares, rights, and interests in the partnership, as *cestuis que trust* or beneficiaries of the same. Hence, in equity, in case of the death of one partner, there is no survivorship in the real estate of the partnership, but his share will go to his proper representatives.

To which representatives (real or personal) the realty will go is a vexed point, which is, however, amply discussed in *Collyer on Partnership*, 82.

PART OWNERS or **QUASI-PARTNERS** [*quasi-associés*], joint owners, or tenants in common, who have a distinct, or at least an independent, although an undivided interest in the property; and neither can transfer or dispose of the whole property, or act for the others as partners can in relation thereto; but merely for his own share, and to the extent of his own several right and interest.

PARTURITION. See **DELIVERY**.

Partus ex legitimo thoro non certius noscitur matrem quam genitorem suum. Fortescue, 42.

—(The offspring of a legitimate bed knows not his mother more certainly than his father.)

Partus sequitur ventrem. 2 Bl. Com. 390.—(The offspring follows the dam.)

Parum differunt quæ re concordant. 2 Bulst. 86.—(Things which agree in substance differ but little.)

Parum est latam esse sententiam nisi mandetur executioni. Co. Lit. 289.—(It is not enough that sentence be given unless it be carried to execution.)

Parum proficit scire quid fieri debet, si non cognoscas quomodo sit facturum. 2 Inst. 503.—(It avails little to know what ought to be done, if you do not know how it is to be done.)

PARTY-JURY, a jury made up of half foreigners and half natives.

PARTY-WALL, a wall that separates one house from the next.

The common use of a wall separating adjoining lands belonging to different owners is *prima facie* evidence that the wall and the land on which it stands belong to the owners of those adjoining lands, in equal moieties, as tenants in common. If a house or office be separated from other premises by a wall, and that wall belongs to the owner of the house or office, he is of common right bound to repair it; and an action will lie against him for not doing it.

The Building Act does not make a party wall common property. *Woodf. Land. and Ten.* 573.

PARVISE, an afternoon's exercise or moot for the instruction of young students, bearing the same name originally with the *Parvisæ* of Oxford. *Selden's notes on Fortescue*, c. 51.

PAS, precedence; right of going foremost.

PASCH [*pasakh*, Heb.], the passover.

PASCHA CLAUSUM, the octaves of Easter or Low Sunday, which closes that solemnity.

PASCHA FLORIDUM, the Sunday before Easter, called Palm Sunday.

PASCHAL RENTS, yearly tributes paid by the clergy to the bishop or archdeacon at their Easter visitations.

PASCUA, a particular meadow or pasture ground set apart to feed cattle.

PASCUAGE, the grazing or pasturing of cattle.

PASNAGE or **PATHNAGE** IN WOODS, &c. See **PANNAGE**.

PASSAGE, a way over water.

PASSAGIO, an ancient writ addressed to the keepers of the ports to permit a man to pass over sea, who had the king's leave. *Reg. Orig.* 193.

PASSAGIUM REGIS, a voyage or expedition to the Holy Land, when made by the kings of England in person. *Cowell*.

PASSATOR, he who has the interest or command of the passage of a river; or a lord to whom a duty is paid for passage.

PASSENGERS, individuals conveyed for hire from one place to another on board ship. Passage ships are those peculiarly appropriated to the conveyance of passengers. The first clause of 5 & 6 Vict., c. 107, repeals the acts 5 & 6 Wm. IV., c. 53; 3 & 4 Vict., c. 21; and 1 & 2 Vict., c. 113, in part. In some respects, passengers may be considered as a portion of the crew. They may be called on by the master or commander of the ship in case of imminent danger, either from tempest or enemies, to lend their assistance for the general safety; and in the event of their declining, may be punished for disobedience. This principle has been recognised in several cases; but as the authority arises out of the necessity of the case, it must be exercised strictly within the limits of that necessity. *Boyce v. Badcliffe*, 1 Camp. 58.

A passenger is not, however, bound to remain on board the ship in the hour of danger, but may quit it if he have an opportunity; and he is not required to take upon himself any responsibility as to the conduct of the ship. If he incur any responsibility, and perform extraordinary services, in relieving a vessel in distress, he is entitled to a corresponding reward. The goods of passengers contribute to general average. *Abbot on Shipping*, p. iii. c. 10.

PASSIAGIARIUS, a ferry-man.

PASSING-TICKET, a kind of permit, being a note or check which the toll-clerks on some canals give to the boatmen, specifying the lading for which they have paid toll.

PASSIVE TRUST, passive uses were resorted to before the Statute of Uses, in order to escape from the trammels and hardships of the common law, the permanent division of property into legal and equitable interests, being clearly an invention to lessen the force of some pre-existing law. For similar reasons, equitable interests were after the sta-

tute revived under the form of trusts. As such, they continued to flourish, notwithstanding the signal amelioration effected at a later period in the law of tenure, because the legal ownership was attended with some peculiar inconveniences. For, in order to guard against the forfeiture of a legal estate for life, passive trusts, by settlement, were resorted to, and hence, trusts to preserve contingent remainders; and passive trusts were and are created in order to prevent dower.

Where an active trust was created, without defining the quantity of the estate to be taken by the trustee, the courts endeavoured to give, by construction, the quantity originally requisite to satisfy the trust in every event, but if a larger estate was expressly given, the courts could not reject the excess; and, although the estate taken, whether expressly or constructively, might not have exceeded the original scope of the trust, yet, if eventually no estate, or a less estate, were actually wanted, the legal ownership remained wholly or partially vested in the trustee, as a merely passive trustee. 1 *Haye's Conv.* 103.

PASSPORT, a licence for the safe passage of any one from one place to another.

Aliens, by 6 & 7 Wm. IV., c. 11, are required, on arrival in this country, to exhibit such passports as they have, and make a declaration of the time and place of their landing, their names, the country to which they belong, and the country from which they have come.

PASTITIUM, pasture-land. *Domesday.*

PASTOR [*pasco*, Lat., to feed], a clergyman who has the care of a flock.

PASTURE, ground on which cattle feed.

It is of two sorts: the one is low meadow land, which is often overflowed, and the other is upland, which lies high and dry. See **COMMON**.

PASTUS, the procuration or provision which tenants were bound to make for their lords at certain times, or as often as they made a progress to their lands. It was often converted into money.

PATENT AMBIGUITY, a doubt that is apparent upon the face of an instrument.

PATENT LETTERS. See **LETTERS PATENT**.

PATENTEE, one who has a patent.

PATENT RIGHT, the exclusive privilege of selling and publishing particular contrivances of art.

PATENT ROLLS, registers in which letters patent are recorded.

Pater est quem nuptiae demonstrant. Co. Lit. 123.—(He is the father whom the nuptials indicate.)

Pater et mater et puer sunt una caro.—(The father, mother, and son are of one flesh.)

PATERNITY. It becomes a question, when a widow marries immediately after the death of her husband, and she be delivered of a child at the expiration of ten months from the death of the first husband, as to the paternity of the child.

Blackstone and Coke say, that if a man die, and his widow soon after marry again, and a child is born within such a time as that by the course of nature it might have been the child of either husband, in this case he is said to be more than ordinarily legitimate, for he may, when he arrives at years of discretion, choose which of the fathers he pleases. But Hargrave suggests, that the circumstances of the case, instead of the choice of the issue, should determine who is the father.

The Romans forbade a woman to marry until after the expiration of ten months from her husband's decease, which term was prolonged to twelve by Gratian and Valentinian. The French code has adopted the same rule, viz., after ten months. It was also established under the Saxon and Danish governments. It was the law in this country until the Conquest. *Beck's Med. Jurisp.* 382.

Patrem sequitur sua proles.—(His own issue follows the father.)

PATIBULARY [*patibulum*, Lat.], belonging to the gallows.

PATIBULATED, hung on a gibbet.

PATRIA, the country; the men or jury of a neighbourhood.

Patria dicitur à patre, quia habet communem patrem, qui est pater patriæ. 7 Co. 13.—

(Country is called from father, because he who is father of his country, has a common father.)

Patria laboribus et expensis non debet fatigari. Jenk. Cent. 6.—(A jury ought not to be fatigued by labours and expenses.)

PATRIARCH, the chief bishop over several countries or provinces, as an archbishop is of several dioceses. *God.* 20.

PATRICIDE, one who has killed his father.

PATRIMONY, an hereditary estate or right descended from ancestors.

PATRINUS, a godfather.

PATRITIUS, an honour conferred on men of the first quality in the time of the English Saxon kings.

PATRON, one who has the disposition of an ecclesiastical benefice; also, an advocate or defender.

PATRONAGE, the right of presenting to a benefice.

A disturbance of patronage is a hindrance or obstruction of a patron to present his clerk to a benefice, the remedy for which is the real action of *quare impedit*.

Patronum faciunt dos, ædificatio, fundus. Dod. Adv. 6.—(Dower, building, and land make a patron.)

PAUPER, a poor man. See **IN FORMA PAUPERIS**.

PAVAGE, money paid towards paving the streets or highways.

PAVING ACTS, 57 Geo. III., c. 29, commonly called Angelo Taylor's Act. 5 & 6 Wm. IV., c. 50.

PAWN or **PLEDGE** [*pignus*], a bailment of goods by a debtor to his creditor, to be kept till the debt is discharged.

A mortgage of goods is in the common

law distinguishable from a mere pawn. By a mortgage the whole legal title passes conditionally to the mortgagee; and if the goods be not redeemed at the stipulated time, the title becomes absolute at law, although equity preserves a redemption. But in a pledge, a special property only passes to the pledgee, the general property remaining in the pledger. Also, in the case of a pledge, the right of the pledgee is not consummated, except by possession: and, ordinarily, when that possession is relinquished, the right of the pledgee is extinguished or waived. But, in the case of a mortgage of personal property, the right of property passes by the conveyance to the pledgee, and possession is not or may not be essential to create or to support the title.

As to things which may be the subject of pawn. These are, ordinarily, goods and chattels; but money, debts, negotiable instruments, choses in action, and indeed any other valuable thing of a personal nature, such as patent rights and manuscripts, may by the common law be delivered in pledge. It is not indispensable that the pledge should belong to the pledger; it is sufficient if it is pledged with the consent of the owner. By the pledge of a thing, not only the thing itself is pledged, but also as accessory the natural increase thereof. If the pledger has only a limited title to the thing, as for life or for years, he may still pawn it to the extent of his title; but when that expires, the pledgee must surrender it to the person who succeeds to the ownership. See 6 Geo. IV., c. 94, and 7 & 8 Geo. IV., c. 29, enabling factors, in certain cases, to pledge the goods of their principals.

It is of the essence of the contract that there should be an actual delivery of the thing to the pledgee; for, until delivery, the whole rests in an executory contract, however strong may be the engagement to deliver it, and the pledgee acquires no right of property in the thing. But there need not be an actual manual delivery, as it is sufficient, if there are any of those acts or circumstances which, in construction of law, are deemed sufficient to pass the possession of property, as the key of a warehouse. As possession is necessary to complete the title, so by the common law the positive loss, or the delivery back of the possession of the thing, with the consent of the pledgee, terminates the title, except it be for a temporary purpose only, or as a special bailee or agent.

It is of the essence of the contract that the thing should be delivered as a security for some debt or engagement. It may be delivered as security for a future debt or engagement, as well as for a past debt; for one or for many debts and engagements; upon condition or absolutely; for a limited time or for an indefinite period. It may also be implied from circumstances, as well as arise by express agreement, and it matters not what is the nature of the debt or the engagement. The

pledge is understood to be a security for the whole, and for every part of the debt or engagement. It is indivisible; *indivisus est pignoris causa*.

As to the pledgee or pawnee's rights and duties. The pawnee acquires, in virtue of the pawn, a special property in the thing, and is entitled to the exclusive possession of it, during the time and for the objects for which it is pledged. In regard to the expenses, which have been incurred by the pledgee about the pledge, if they are necessary then the pledger is bound to reimburse them to the pledgee; but if they are merely useful then he is not bound to reimburse them unless incurred by his own express or implied authority. He has a right to sell the pledge, when there has been a default in the pledger, in complying with the engagement. He may file a bill in equity against the pawner for a foreclosure and sale, or he may proceed to sell *ex mero motu*, upon giving due notice of his intention to the pledger. If several things be pledged, each is deemed liable for the whole debt or engagement. And the pledgee may proceed to sell them from time to time, until the debt or other claim be completely discharged. The possession of the pawn does not suspend the right to sue for the whole debt or other engagement, without selling the pawn, for it is only a collateral security. A pawnee cannot become the purchaser at the sale. A pledgee cannot alienate the property absolutely, nor beyond the title actually possessed by him, unless in special cases. He may deliver the pawn into the hands of a stranger for safe custody, without consideration; or he may sell or assign all his interest in the pawn, or he may convey the same interest conditionally, by way of pawn, to another person, without destroying or invalidating his security.

The following rules elucidate the principles as to the pawnee's title to use the pawn:

(1.) If the pawn is of such a nature that the due preservation of it requires some use, there, such use is not only justifiable, but it is indispensable to the faithful discharge of the duty of the pawnee.

(2.) If the pawn is of such a nature that it will be worse for the use, such, for instance, as the wearing of clothes, which are deposited there, the use is prohibited to the pawnee.

(3.) If the pawn is of such a nature that the keeping is a charge to the pawnee, as, if it is a cow or a horse, there the pawnee may milk the cow and use the milk, and ride the horse, by way of recompense for the keeping.

(4.) If the use will be beneficial to the pawn, or it is indifferent, there it seems that the pawnee may use it.

(5.) If the use will be without any injury, and yet the pawn will thereby be exposed to extraordinary perils, there the use is impliedly interdicted.

The pawnee is liable for ordinary neglect in keeping the pawn. He must return the pledge and its increments, if any, after the

debt or other duty has been discharged. He must render a due account of all the income, profits, and advantages derived by him from the pledge, in all cases where such an account is within the scope of the bailment.

As to the pledger's rights and duties.

If the pledge is conveyed, by way of mortgage, and thus passes the legal title, unless the pledge is redeemed at the stipulated time, the title of the pledgee becomes absolute at law; and the pledger has only an equitable right to redeem. If, however, it be a mere pledge, as the pledger has never parted with the general title, he may, at law, redeem, notwithstanding he has not strictly complied with the conditions of his contract. If, when the pledger applies to redeem, the pledge has been sold by the pledgee, without any proper notice to the former, no tender of the debt due need be made before bringing an action therefor; for the party has incapacitated himself to comply with his contract to return the pawn. Subject to the pledgee's right, the owner has a right to sell or assign his property in the pawn. As the general property of goods pawned remains in the pawner, and the pawnee has a special property only, either may maintain an action against a stranger for any injury done to it, or for any conversion of it. Goods pawned are not liable to be taken in execution in an action against the pawner, at least, not, unless the bailment is terminated by payment of the debt, or by some other extinguishment of the pawnee's title, except in case of the Crown, and then subject to the pawnee's right. By the act of pawning, the pawner enters into an implied engagement or warranty that he is the owner of the property pawned. The pawner is responsible for all frauds, not only in the title but in the concoction of the contract. The pawner must reimburse to the pawnee all expenses and charges which have been necessarily incurred by the latter in the preservation of the pawn, even though by some subsequent accident, these expenses and charges may not have secured any permanent benefit to the pawner.

The contract of pledge is put an end to or extinguished,

(1.) By the full payment of the debt, or the discharge of the other engagements for which the pledge was given;

(2.) By the satisfaction of the debt in any other mode, either in fact or by operation of law; as, for instance, by receiving other goods in payment or discharge of the debt;

(3.) By taking a higher or different security for the debt, without any agreement that the pledge shall be retained therefor (this is called a *novation* in the Roman law);

(4.) By extinguishing the debt, which also extinguishes the right of the pledge.

(5.) By the debt being barred by prescription.

(6.) By the thing perishing.

(7.) By any act of the pledgee, which, amounts to a release or waiver of the pledge.

Story on Bailments, c. v.

PAWNAGE or PANNAGE. See **PANNAGE**. **PAWNBROKER**, one who lends money on goods which he receives upon pledge.

By the Pawnbrokers' Act, 39 & 40 Geo. III., c. 99, it is enacted (*inter alia*), that any person suspecting his goods to have been unlawfully pawned, and satisfying a justice of the peace that there is probable ground for that suspicion, may obtain a warrant for searching the house of the person supposed to have taken them in pawn, and if on such search they shall be found, and the property of the claimant proved, he shall be entitled to have them restored.

PAWNEE, the person with whom a pawn is deposited.

PAWNER, the person depositing a pawn.

PAYEE, one to whom a bill of exchange or promissory note is made payable.

PAYMENT, money paid before the day appointed, is in law payment at the day; for it cannot, in presumption of law, be any prejudice to him to whom the payment is made, to have his money before the time; and it appears, by the party's receipt of it, that it is for his own advantage to receive it then, otherwise he would not do it. 5 Rep. 117.

For payment of rent there are said to be four times:—1st, a voluntary time, that is not satisfactory, and yet good to some purpose; as where a lessee pays his rent before the day, this gives seisin of the rent, and enables him to whom paid to bring his assize (now abolished) for it; 2d, a time voluntary and satisfactory in some cases: when it is paid the morning of the last day, and the lessor dies before the end of the day, this is a good payment to bind the heir or executor, but not the Crown; 3d, the legal, absolute, and satisfactory time, which is a convenient time before the last instant of the last day, and then it must be paid; 4th, satisfactory and not voluntary, but coercive when forced, and recovered by suit at law. Co. Litt. 200.

PAYMENT, *particular of*. See **PARTICULAR OF PAYMENT**.

PAYMENT OF MONEY INTO COURT.

When a person is satisfied that he is indebted to another, upon a claim for a sum certain, or capable of being ascertained by mere computation, but disputes the amount claimed of him, then, before action brought, he may tender to his creditor the sum which he admits he owes, and then plead the tender in bar of the action. Or, after action brought, he may, even though the claim be for an unliquidated amount, apply to a Judge to stay the proceedings, upon payment of the sum the defendant admits to be recoverable, and to show cause why, upon default of plaintiff's accepting it, he should not pay to defendant the costs subsequent to the application, if the plaintiff afterwards accept that sum in satisfaction. Or, after action brought, and after, or in some cases before, the declaration, he may pay that sum into court and plead the payment of it, and let the plaintiff afterwards proceed in the action at his peril.

By 3 & 4 Wm. IV., c. 42, § 21, a defendant in all personal actions (except actions for assault and battery, false imprisonment, libel, slander, malicious arrest or prosecution, criminal conversation, or debauching of the plaintiff's daughter or servant), by leave of any of the superior courts, where such action is pending, or a Judge of any of the superior courts, may pay into court a sum of money, by way of compensation or amends, in such manner and under such regulations as to the payment of costs and the form of pleading as the said Judges, or such eight or more of them, shall, by any rules or orders by them to be from time to time made, order and direct.

The 6 & 7 Vict., c. 96, enables money to be paid into court in actions of libel. See **LIBEL**.

Money may be paid into court as of course without any rule or Judge's order in the following cases:—

In action on promises, the general rule is, that where the breach is substantially for the non-payment of money, but not otherwise, money may be paid into court as of course, but in other cases, a rule or order must be obtained to pay it in.

In debt on simple contract, the defendant may pay money into court, as of course: so in debt for rent; or on a policy of insurance; or for non-residence. But, generally, in debt on a record or specialty, he cannot do so as of course.

In covenant, where the breach assigned is the non-payment of a sum of money, the defendant may pay money into court, as of course; but in other cases, a rule or order must be obtained.

In trespass, the defendant cannot pay money into court as of course, nor in trespass for mesne profits, nor, in case, trover, or replevin, but rules or orders must be obtained.

In actions against mail-coach contractors, stage-coach proprietors, or common carriers, for the loss of or injury to goods, the defendants may pay money into court, as of course. 1 Wm. IV., c. 68.

In actions against justices of the peace, or against officers of the excise or customs, for any thing done by them in the execution of their respective offices, if they have not made a tender, or if they conceive the amends tendered to be insufficient, they may have leave to pay into court such sum of money as they shall think fit.

If there be two or more counts in a declaration, the defendant may pay money into court upon one of them, and plead it as in other cases. Where there are several counts for several causes of action, or several breaches are assigned in covenant, the defendant may plead payment into court of one entire sum, in satisfaction of all the counts or breaches. One of several defendants may pay a sum of money into court. If a defendant find that he has not paid in a sufficient sum, he will be allowed to pay in a further sum on

payment of costs. When money is paid into court, such payment must be pleaded in all cases.

By R. T., 1 Vict., "the plaintiff, after the delivery of a plea of payment of money into court, shall be at liberty to reply to the same by accepting the sum so paid into court in full satisfaction and discharge of the cause of action in respect of which it has been paid in; and he shall be at liberty in that case to tax his costs of suit; and in case of non-payment thereof within forty-eight hours, to sign judgment for his costs of suit so taxed, or the plaintiff may reply that he has sustained damages [or that the plaintiff was and is indebted to him, *as the case may be*] to a greater amount than the said sum; and in the event of an issue thereon being found for the defendant, the defendant shall be entitled to judgment and costs of suit."

If the plea of payment into court be to the whole declaration, and the plaintiff replies that he accepts it in satisfaction of the cause of action, he will, in general, be entitled to his costs. If the plea be only to part of the declaration, and there be another plea or pleas to the rest, and the plaintiff is not willing to proceed further, he will then have to enter a *nolle prosequi* to that part of the cause of action to which the latter plea or pleas are pleaded, and he liable to the defendant's costs in respect of it. Where money is paid into court in several actions which are consolidated, and the plaintiff, without taxing costs, proceeds to trial on one, and fails, he shall be entitled to costs on the others, up to the time of paying money into court.

By paying money into court on the whole of a special declaration, or on the special counts, the defendant impliedly admits the contract so declared on, and all the breaches on which it is paid in, and the only remaining question to be determined is the amount of the damages. The money can never be taken out of court by the defendant or his representatives. *Chit. Arch. Prac.* 969.

PEACE, a quiet behaviour towards the Queen and her subjects.

It is one of the prerogatives of the Crown to make war and peace.

PEACE, bill of, a bill brought by a person to establish and perpetuate a right which he claims, and which from its nature may be controverted by different persons at different times, and by different actions; or where separate attempts have already been unsuccessfully made to overthrow the same right, and where justice requires that the party should be quieted in the right, if it is already sufficiently established under the direction of the court. The obvious design of such a bill is to secure repose from perpetual litigation. *Interest reipublice, ut sit finis litium*.

One class of cases to which this remedial process is properly applied, is where there is one general right to be established against a great number of persons. And it may be resorted to either where one person claims

or defends a right against many: or where many claim or defend a right against one.

Another class of cases is where the plaintiff has, after repeated and satisfactory trials, established his right at law, and yet is in danger of further litigation and obstruction to his right from new attempts to controvert it. Under such circumstances, equity will interfere and grant a perpetual injunction to quiet the possession of the plaintiff, and to suppress future litigation of the right. 2 *Story's Eq. Jurisp.* 133.

PEACE, *breach of the*, a violation of that quiet, peace, and security which is guaranteed by the laws, for the public comfort of the subjects of this kingdom.

PEACE, *clerk of the*, an officer who acts as clerk to the court of quarter sessions, and records all their proceedings. 1 *Vict., c. 83.*

PEACE, *commission of the*, one of the authorities, by virtue of which the Judges sit upon circuit. See ASSIZE.

PEACE OF GOD AND THE CHURCH [*pax Dei et ecclesie*], that cessation which the king's subjects had from trouble and suit of law between the terms, and on Sundays and holidays.

PEACE, *justices of*. See JUSTICES.

PEACE OF THE QUEEN [*pax regine*], that security for life and goods which the Queen promises to all her subjects, or others taken into her protection.

Peccata contra naturam sunt gravissima. 3 *Inst.* 20.—(Crimes against nature are the most heinous.)

Peccatum peccato addit qui culpæ quam facit patrocinium defensionis adjungit. 5 *Co.* 49.—(He adds one offence to another, who, when he commits an offence, joins the protection of a defence.)

PECIA, a piece or small quantity of ground. *Paroch. Antiq.* 240.

PECULATORY, a robber of the public.

PECULATUS, embezzling the public money.

PECULIAR, a particular parish or church that has jurisdiction within itself, and power to grant administration or probate of wills, &c., exemption from the ordinary. There are several sorts:—

1. Royal peculiars, which are the Sovereign's free chapels, and are exempt from any jurisdiction but that of the Sovereign.

2. Peculiars of the archbishops, exclusive of the bishops and archdeacons, which arose from a privilege they had to enjoy jurisdiction in such places where their seats and possessions were.

3. Peculiars of bishops, exclusive of the jurisdiction of the bishop of the diocese in which they are situate.

4. Peculiars of bishops in their own dioceses, exclusive of archidiaconal jurisdiction.

5. Peculiars of deans, deans and chapters, prebendaries, and the like, which are places wherein, by ancient compositions, the bishops have parted with their jurisdiction as ordinaries to these societies.

PECULIARIS, *court of*, a branch of the Court of Arches. It has a jurisdiction over all

those parishes dispersed through the province of Canterbury in the midst of other dioceses, which are exempt from the ordinary's jurisdiction, and subject to the metropolitan only. All ecclesiastical causes arising within these peculiar or exempt jurisdictions, are originally cognizable in this court, from which an appeal lies to the Court of Arches. 3 *Step. Com.* 431.

PECUNIA, properly money, but anciently cattle, and sometimes other goods as well as money.

PECUNIA SEPULCHRALIS, money anciently paid to the priest at the opening of a grave, for the good of the deceased's soul. See MORTUARY.

PECUNIARY, paid or given in money.

PECUNIARY CAUSES, such as arise either from the withholding of ecclesiastical dues, or the doing or neglecting some act relating to the church, whereby damage accrues to the plaintiff towards obtaining a satisfaction, for which he is permitted to institute a suit in the spiritual court.

PECUNIARY LEGACY, a testamentary gift of money.

Pecunia dicitur à pecus, omnes enim veterum divitiæ in animalibus consistebant. *Co. Lit.* 207.—(Money (*pecunia*) is so called from cattle (*pecus*), because the wealth of our ancestors consisted in cattle.)

PEDAGE, money given for the passing of foot or horse through any country. *Spelm.*

PEDIGREE [*per* and *degré*, Skinner], genealogy; lineage; account of descent.

PEDIS ABCISSIO, cutting off a foot; a punishment anciently inflicted instead of death. *Fleta, l. 1, c. 38.*

PEDONES, foot soldiers.

PEERAGE, the dignity of the lord, or peers of the realm.

PEER, an equal; one of the same rank.

PEERS OF FEES, vassals or tenants of the same lord, who were obliged to serve and attend him in his courts, being equal in function; these were termed *peers of fees*, because holding fees of the lord, or because their business in court was to sit and judge, under their lords, of disputes arising upon fees; but if there were too many in one lordship, the lord usually chose twelve, who had the title of peers, by way of distinction; whence, it is said, we derive our common juries and other peers. *Cowell.*

PEERS OF THE REALM [*proceres*], the nobility of the kingdom and lords of Parliament, who are divided into dukes, marquises, earls, viscounts, and barons. They are all called peers, because, although there is a distinction of dignity among them, they are equal in all public actions, as in their votes of Parliament, and trial of any nobleman. *Selden's Titles of Honour.*

Peers are created either by writ or by patent. Those who claim by prescription must suppose either a writ or patent made to their ancestors, though by length of time it is lost. The creation by writ, or the Queen's letter, is a summons to attend the

House of Lords, by the style and title of that barony which the Queen is pleased to confer. That by patent is a royal grant to a subject of any dignity or degree of peerage. The creation by writ is the more ancient way, but a man is not ennobled thereby, unless he actually take his seat in the House of Lords; and some are of opinion, that there must be at least two writs of summons and a sitting in two distinct Parliaments to evidence an hereditary barony; and therefore the most usual, because the surest way, is to grant the dignity by patent, which enures to a man and his descendants, according to the limitations thereof, though he never himself make use of it.

In cases of treason and felony, a nobleman is tried by his peers, but in mere misdemeanors he is tried, like a commoner, by jury. He cannot be arrested in civil cases, although he is not exempted from arrest in criminal matters. A peer loses his nobility by death or attainder. 1 Bl. Com. 227.

PEERESS, a lady who may be so made by creation, descent, or marriage.

The 20 Hen. VI., c. 9, declares that peeresses, either in their own right or by marriage, shall be tried before the same judicature as other peers of the realm. This statute is said to be remarkable, as being the only instance of a legislative explanation of any part of *Magna Charta*.

If a woman, noble in her own right, marry a commoner, she still remains noble, and shall be tried by her peers; but if she be only noble by marriage, then, by a second marriage with a commoner, she loses her dignity: for as by marriage it is gained, by marriage it is also lost. Yet, if a duchess dowager marry a baron, she continues a duchess still; for all the nobility are *pares*, and therefore it is no degradation. A woman, noble in her own right, or by a first marriage, marrying a commoner, communicates no rank or title to her husband. 1 Inst. 326.

PEINE FORTE ET DURE (pressing to death), a punishment, now happily abolished, by which a prisoner was compelled to put himself upon his trial. He was remanded to prison, and put into a low dark chamber, and there laid on his back on the bare floor naked, unless where decency forbade; upon his body was placed as great a weight of iron as he could bear; on the first day he received no sustenance, save three morsels of the worst bread, and on the second day three draughts of standing water that should be nearest to the prison door, and such was alternately his daily diet till he died or answered.

PELA, a peal, pile, or fort.

PELES, issues arising from or out of a thing.

PELFE and PELFRE, booty; also the personal effects of a felon convict.

PELLAGE, the custom or duty paid for skins of leather.

PELLICIA, a pilch or surplice. *Spelm.*

PELIPARIUS, a leather-seller or skinner.

PELLOTA, the ball of a foot.

PELLS, *clerk of the*, an officer in the Exchequer, who enters every seller's bill on the parchment rolls, the roll of receipts, and the roll of disbursements.

PELT-WOOL, the wool pulled off the skin or pelt of dead sheep.

PEN, a high mountain.

PENAL LAWS, those laws which prohibit an act, and impose a penalty for the commission of it. They are of three kinds: *pena pecuniaria*, *pena corporalis*, and *pena exilii*. *Cro. Jac.* 415.

PENAL STATUTES, those which impose penalties or punishments for an offence committed.

PENAL STATUTES, *actions on*. The penalties or forfeitures under these statutes is generally made recoverable by the Crown, or the party aggrieved, or a common informer, as the case may be.

This remedy is generally designated a penal action; or where one part of the forfeiture is given to the Crown and the other part to the informer, a popular or *qui tam* action.

PENALTY, where a certain gross sum of money is reserved on an agreement to be paid in case of the non-performance of such agreement, it is generally to be considered as a penalty, the legal operation of which is, not to create a forfeiture of that entire sum, but only to cover the actual damages occasioned by the breach of contract. Wherever the payment of a small sum is secured by the payment of a much larger sum, it must be considered as a penalty, and calling a sum liquidated damages will not change its character as a penalty, if upon the true construction of the instrument, it must be deemed to be a penalty.

A general principle adopted in equity is, that wherever a penalty is inserted merely to secure the performance or enjoyment of a collateral object, the latter is considered as the principal intent of the instrument, and the penalty is deemed only as accessory; and, therefore, as intended only to secure the due performance thereof, or the damage really incurred by the non-performance. In every such case, the true test by which to ascertain whether relief can or cannot be had in equity, is to consider whether compensation can be made or not. If it cannot be made, then courts of equity will not interfere; if it can be made, then, if the penalty is to secure the mere payment of money, courts of equity will relieve the party upon paying the principal and interest. If it is to secure the performance of some collateral act or undertaking, then courts of equity will retain the bill; and will direct an issue *quantum damificatus*; and when the amount of damages is ascertained by a jury upon the trial of such an issue, they will grant relief upon the payment of such damages.

Courts of equity will not interfere in cases of liquidated damages, but will deem the parties entitled to fix their own measure of damages.

Courts of equity will decree to the obligee of a bond interest beyond the penalty wherever the obligor has unreasonably deprived him of his power to enforce it, until it is no longer adequate to secure his rights. 2 *Story's Eq. Jurisp.* 497.

PENANCE [*pœnitentia*], an ecclesiastical punishment used in the discipline of the church, which affects the body of the penitent, by which he is obliged to give a public satisfaction to the church for the scandal he has given by his evil example. So in the primitive times, they were to give testimony of their reformation before they were re-admitted into the Christian society. In the case of incontinence, the offender is usually enjoined to do a public penance in the parish church, bareheaded and barefooted, in a white sheet, and to make open profession of his crime in a prescribed form of words, which is augmented or moderated according to the quality of the offence and the discretion of the Judge. So in smaller faults and scandals, a public satisfaction or penance, as the Judge shall decree, is to be made before the minister, churchwardens, or some of the parishioners, respect being had to the quality of the offence and circumstances of the fact; as in case of defamation or laying violent hands on a clerk, or the like. And as these censures may be moderated by the Judge's discretion, according to the nature of the offence, so also they may be totally altered by a commutation of penance; and this has been the ancient privilege of the ecclesiastical Judge to admit that an oblation of a sum of money for pious uses shall be accepted in satisfaction of public penance. But penance must be first enjoined before there can be a commutation; or otherwise it is a commutation for nothing. *Godolph. Reper. Canon, app.* 18.

The punishment of *peine forte et dure* was penance. 4 B. C. 325.

PENDENTE LITE (during litigation).

An administration is sometimes granted when a suit is commenced in the ecclesiastical court touching the validity of a will.

An injunction will be granted to restrain a party from making vexatious alienations of real property *pendente lite*.

Pendente lite nihil innovetur. Co. Lit. 344.— (During a litigation nothing new should be introduced.)

PENERARIUS, an ensign bearer.

PENITENTIARY HOUSES, prisons, where criminals are confined to hard labour. 19 *Geo. III., c.* 74.

PENON, a standard, banner, or ensign carried in war.

PENSAM, the full weight of twelve ounces.

PENSION, an allowance made to any one without an equivalent.

The duty upon offices and pensions is a branch of the Crown's extraordinary revenue. It consists in an annual payment (over and above all other duties) out of all salaries, fees, and perquisites of offices and persons, payable by the Crown, exceeding

the value of 100*l.* per annum. 31 *Geo. II., c.* 22; 1 & 2 *Vict., c.* 2.

By 6 *Anne, c.* 7, and 2 *Geo. I., st.* 2, *c.* 56, no person having a pension under the Crown during pleasure, or for any term of years, is capable of being elected or sitting in the House of Commons.

Taking a pension from any foreign prince without the consent of the Crown, is an offence against the government, and punishable by fine and imprisonment.

PENSION OF CHURCHES, certain sums of money paid to clergymen in lieu of tithes.

A spiritual person may sue in the spiritual court for a pension originally granted and confirmed by the ordinary; but where it is granted by a temporal person to a clerk, he cannot; as if one grant an annuity to a parson, he must sue for it in the temporal courts. *Cro. Eliz.* 675.

PENSION OF THE INNS OF COURT, an annual payment made by each member to the houses. Also, that which in the two Temples is called a parliament, and in Lincoln's Inn a council, is, in Gray's Inn, termed a pension, being usually an assembly of the members to consult of the affairs of the society.

PENSIONER, one who is supported by an allowance at the will of another; a dependant; he who receives an annuity from government.

Also, a band of gentlemen who attend as a guard on the royal person. It was instituted in 1539; each gentleman has an allowance of 150*l.* per annum, and two horses. This band is now called the Honorable Body of Gentlemen at Arms.

PENSION-WRIT, a process issued against a member of an inn of court, when he is in arrear for pensions, commons, or other duties, &c.

PENTECOSTALS, pious oblations made at the feast of Pentecost by parishioners to their priests; and sometimes by inferior churches or parishes to the principal mother church. They are also called Whitsun-farthings.

PENTONVILLE PRISON, a place which is provided for the confinement of male convicts under sentence or order of transportation, until they shall be transported, or entitled to their freedom, or removed to some other place of imprisonment. It is under the government of commissioners, to be appointed by her Majesty's council, who are to form a body corporate, by the name of "The Commissioners for the Government of the Pentonville Prison;" and power is conferred on them to hold meetings, and make rules, subject to the approbation of a principal secretary of state, and with the like approbation to appoint officers, consisting of a governor, chaplain, medical officer, and such others as may be found necessary. The commissioners must, from time to time, appoint one or more of themselves to visit the prison during the interval be-

tween their meetings, and, if they think fit, may delegate power to such visitors to make orders in cases of pressing emergency. The commissioners must make annual reports to the Secretary of State as to all matters relating to the prison, its discipline and management, which reports shall afterwards be laid before Parliament. 5 & 6 Vict., c. 29.

PEOPLE, the subjects of the kingdom. They are either aliens, denizens, or natives, and these are either clergy or laity, which last are either civil, military, or maritime.

PER AND POST. To come in in the *per* is to claim by or through the person entitled to an estate; to come in in the *post*, is to claim by a paramount and prior title.

PERAMBULATION, a travelling through or over.

Perambulation of parishes is to be made by the minister, churchwardens, and parishioners, by going round the same once a-year, in or about Ascension week; and the parishioners may well justify going over any man's land in their perambulation, according to usage, and it is said, may abate all nuisances in their way. *Cro. Eliz.* 441. Manors are also perambulated.

PERAMBULATIONE FACIENDA, a writ which lay where any encroachments have been made by a neighbouring lord, &c.; the sheriff perambulates or settles the bounds. Equity grants commissions to perambulate.

Actions upon writs of perambulation were authorized in Scotland, by the act 1597, c. 79, to settle the bounds of disputed properties adjoining each other.

PERANGARIA. See **ANGARIA**.

PERCA, a perch of land.

PER CAPITA (through one's own right).

PERCAPTURA, a place in a river properly banked for the better preserving and taking of fish.

PERCH, a measure of land, consisting of five yards and a half of the standard measure. 5 Geo. IV., c. 74.

PER, CUI, and POST, writs of entry, which are abolished.

PERDINGS, men of no substance.

PERDONATIO ULAGARIÆ, a pardon for a man who, for contempt in not yielding obedience to the process of a court, is outlawed, and afterwards of his own accord surrenders. *Reg. Orig.* 28.

Pereat unus ne percant omnes.—(Let one perish lest all perish.)

PEREMPTORY [*perimere*, Lat., to cut off], final and determinate.

PEREMPTORY CHALLENGE, an arbitrary and capricious species of challenge to a certain number of jurors, without showing any cause.

This privilege is granted to a prisoner in criminal cases, but denied to the Crown by 6 Geo. IV., c. 50. In treason a prisoner can challenge without cause thirty-five jurors, and in felony twenty.

PEREMPTORY DAY, a precise time when business by rule of court is to be spoken to;

but if it cannot be spoken to then, the court, at the prayer of the party concerned, will give a further day without prejudice to him.

PEREMPTORY MANDAMUS, a second *mandamus* which issues where a return has been made to the first writ, which is found either insufficient in law or false in fact. To this writ no other return will be admitted but a certificate of perfect obedience and due execution of the writ. See **MANDAMUS**.

PEREMPTORY PAPER. In the Queen's Bench all rules enlarged till the following term and rules for new trials, which stand over from one term to another, are set down in what is called the peremptory paper; or for the first day of the term, and the same for every following day, until the whole shall be disposed of. A list of them shall, after every term, be posted in the offices, both on the Crown and civil side, specifying the particular days on which the respective motions are to come on; and a copy of such lists shall be delivered to each of the Judges the day before the beginning of term. Leave of the court must be obtained to postpone a motion or enlarge a rule. *Chit. Arch. Proc.* 96.

PEREMPTORY PLEAS or PLEAS IN BAR, those which are founded on some matter tending to impeach the right of action itself.

PEREMPTORY RULE, a defendant, if he wish a plaintiff to declare, should obtain from one of the masters, upon counsel's signature, a peremptory rule to declare, within a certain time, which rule is absolute in the first instance. It prevents a plaintiff from taking out more rules for time to declare. If the plaintiff do not declare within the time so limited, the defendant may, after a four-day written demand of declaration, sign judgment of *non pros*. *R. H.*, 2 Wm. IV., r. 39.

PEREMPTORY UNDERTAKING, the court, as a matter of indulgence, will, in some cases, set aside a nonsuit upon payment of costs, and a peremptory undertaking to try, at the next sittings or assizes, where the plaintiff has been nonsuited on account of the non-attendance of his witnesses, or the like.

PEREMPTORY WRIT, a class of original writs.

Perfectum est cui nihil deest secundum sue perfectionis vel naturæ modum. Hob. 151.—(That is perfect which wants nothing, according to the measure of its perfection or nature.)

Periculosum est res novas et inusitatas inducere. Co. Lit. 379.—(It is dangerous to introduce new and unusual things.)

Periculosum existimo quod bonorum virorum non comprobatur exemplo. 9 Co. 97.—(I think that dangerous which is not warranted by the example of good men.)

Periculum rei venditæ, nondum traditæ, est emptoris.—(The risk of a thing sold, and not yet delivered, is the purchasers.)

PERINDE VALERE, a dispensation granted to a clerk, who, being defective in capacity for a benefice or other ecclesiastical function, is *de facto* admitted to it. *Gibs.* 87.

PERINDINARE, to stay, remain, or abide in a place.

PERIPHRAISIS, circumlocution; use of many words to express the sense of one.

Perjuri sunt qui servatis verbis juramenti decipiunt aures eorum qui accipiunt. 3 Inst. 166.—(They are perjured, who, preserving the words of an oath, deceive the ears of those who receive it.)

PERJURY, an offence against public justice, being a crime committed when a lawful oath is administered by any that has authority, to any person in any judicial proceeding, who swears absolutely and falsely in a matter material to the issue or cause in question. Also, a false oath taken in certain cases, not of a judicial kind, shall be deemed to amount to perjury, and be visited by the same penalties.

A mere voluntary oath, that is, an oath administered in a case for which the law has not provided, is not one in which perjury can be assigned; for such a proceeding is not required, so neither is it protected by the law. But voluntary oaths are now prohibited by 5 & 6 Wm. IV., c. 62, which provides that a certain form of declaration may be substituted for them, and that any party falsely making such declaration, shall be guilty of a misdemeanour.

It is necessary, in order to constitute the offence of perjury,

1. That the false oath be taken wilfully, i. e., with some degree of deliberation, and committed *malo animo*. It must be positive and absolute, not merely owing to surprise or inadvertency, or a mistake of the true state of the question.

2. The oath must be taken either in a judicial proceeding, or in some other public proceeding of the like nature.

3. It must be taken before persons lawfully authorized to administer.

4. It must be taken by a person sworn to depose the truth.

5. The oath must be false, although it is not material if the person who swears it know nothing of it.

6. It must be taken absolutely and directly, therefore if a man only swears as he thinks, remembers, or believes, he cannot be guilty of perjury; but otherwise, if he swear that he believes a fact to be true, which he may know to be false.

7. The thing sworn ought to be in some way material, for if it be wholly foreign to the purpose or immaterial, and neither pertinent to the matter in question nor tending to aggravate or extenuate the damages, nor likely to induce the jury to give credit to the substantial part of the evidence, it cannot amount to perjury, because it is wholly insignificant.

8. It is not material whether the false oath were credited or not, or whether the party in

whose prejudice it was taken was in the event damaged by it, for the prosecution is not grounded on the damage to the party, but on the abuse of public justice.

Subornation of perjury is the offence of procuring another to take such a false oath as constitutes perjury in the principal.

In prosecutions for perjury there can be no conviction except on the oath of two witnesses, though it will be sufficient that the perjury be directly proved by one witness, and corroborative evidence on some particular point be given by another; and where the alleged perjury consists in the defendants having contradicted what he himself swore on a former occasion, the testimony of a single witness in support of the defendant's own original statement will support a conviction. By 23 Geo. II., c. 11, any Judge of assize, while the court is sitting, or within twenty-four hours after, is empowered to direct a witness to be prosecuted for perjury; and it is provided that in an indictment for perjury or subornation, it shall be sufficient to set forth the substance of the offence.

Perjury and subornation are both misdemeanours, and their punishment, at common law, is by fine and imprisonment. But the following statutes have enacted additional punishments. By 5 Eliz., c. 9 (made perpetual by 29 Eliz., c. 5, § 2, and 21 Jac., c. 28, § 8), the offender, if indicted for perjury, may be imprisoned for six months and fined 20*l.*, and if indicted for subornation may be fined 40*l.*, and in default of payment, imprisoned for six months. By 2 Geo. II., c. 25, § 2, he may also in either case be transported or sent to the house of correction, with hard labour, for seven years. And by 3 Geo. IV., c. 114, the offender may be sentenced to imprisonment, with hard labour, for any term for which he may be lawfully imprisoned, either in addition to or in lieu of any other punishment.

The following statutes relate to perjury in particular cases: government annuities, 48 Geo. III., c. 142, §§ 4, 22; 52 Geo. III., c. 129, §§ 2, 7; exchequer bills, 51 Geo. III., c. 15, §§ 9, 10; stamps, 55 Geo. III., c. 184, §§ 52, 53; customs, 3 & 4 Wm. IV., c. 51, §§ 28, 29; excise, 7 & 8 Geo. IV., c. 53, §§ 29, 30, 31; naval stores, 39 & 40 Geo. III., c. 89, § 30; quarantine, 6 Geo. IV., c. 78, § 29; pilotage, 6 Geo. IV., c. 125, § 80; vessels carrying passengers, 43 Geo. III., c. 56, § 20; bankrupts, 6 Geo. IV., c. 16, § 99; 5 & 6 Vict., c. 122, § 81; insolvents, 7 Geo. IV., c. 57, § 71; 1 & 2 Vict., c. 110, § 100; registry acts, 2 & 3 Ann., c. 4, §§ 18, 19; inclosure act, 51 Geo. III., c. 109, § 43; elections, 2 Wm. IV., c. 45, § 58; 5 & 6 Wm. IV., c. 76, § 34; naval and military pay, &c., 11 Geo. IV., and 1 Wm. IV., c. 20, §§ 85, 86; 7 Geo. IV., c. 78, § 29; slave trade, 5 & 6 Vict., c. 42, § 7.

If perjury be committed in a spiritual cause, the spiritual Judge has authority to inflict canonical punishment, and prohibition

will not go. But the Judge cannot punish *pro salute animæ*; and the party grieved by such perjury must recover his damages at the common law.

In Scotland the punishment of perjury is directed by statute, the last of which, 1555, c. 47, declares perjury to be punishable by confiscation of movables, piercing the tongue, and infamy; to which the Judge, in aggravated cases, may add any other penalty that the case seems to require. By the same act, subornation of perjury is punishable as perjury.

PERMISSIVE WASTE, the neglect of necessary repairs.

PERMIT, a license or instrument granted by the officers of excise, certifying that the excise duties on certain goods have been paid, and permitting their removal from some specified place to another. The acts relative to permits were consolidated by the 2 Wm. IV., c. 16. The commissioners of excise provide moulds or frames for making the paper used in the printing of permits which have the water mark, "Excise Office," visible in its substance; and the counterfeiting of such frames or paper, or the having the latter in one's possession without being able satisfactorily to account for it, are felonies, punishable by transportation. Permits are not delivered except on the receipt of "request notes," specifying the places from and to which the goods are to be conveyed. A penalty of 500*l.* is to be imposed on all persons counterfeiting "request notes," or fraudulently procuring or misapplying permits; and all goods for the removal of which permits are necessary, if they be removed without them, are to be forfeited, and the various parties engaged in their removal are to be each amerced in a penalty of 200*l.* It is needless to dwell on the extreme inconvenience that would result from such regulations were permits in extensive use. But such is not the case; and they are now wholly dispensed with, except in the case of a very few articles. *McCulloch's Comm. Dict.*

PERMUTATIONE, &c., a writ to an ordinary commanding him to admit a clerk to a benefice upon exchange made with another. *Reg. Orig.* 307.

PERMUTATION or **BARTER**, the exchange of one movable subject for another.

PER MY ET PER TOUT (by the half and the whole).

PERNANCY [*prendre*, Fr., to take], the taking or receiving any thing.

PERNOR, he who receives the profits of lands, &c.

PER PAIS (by the country).

PERPARS, a part of the inheritance.

Perpetua lex est, nullam legem humanam ac positivam perpetuam esse; et clausula quæ abrogationem excludit, ab initio non valet. Bacon.—(It is an everlasting law, that no positive and human law shall be perpetual; and a clause which excludes abrogation is not good from its commencement.)

PERPETUAL CURATE, a permanent minister in holy orders, who is charged with the care of souls, and entitled to emolument for his services.

By 1 & 2 Wm. IV., c. 38, churches or chapels built and endowed by particular individuals, shall have districts assigned to them, and be deemed perpetual curacies, and the right of nomination thereto shall be vested in the person so building and endowing.

PERPETUATING TESTIMONY. A bill in Chancery is frequently filed for the purpose of preserving testimony when it is in danger of being lost, before the matter to which it relates can be made the subject of judicial investigation. This sort of bill is most frequent when lands are devised by will away from the heir-at-law; and the devisee, in order to perpetuate the testimony of the witnesses to such will, exhibits a bill in Chancery against the heir, and sets forth the will *verbatim*, therein suggesting that the heir is inclined to dispute its validity; and then the defendant having answered, they proceed to issue, as in other cases, and examine the witnesses to the will; after which the cause is at an end without proceeding to any decree, no relief being prayed by the bill; but the heir is entitled to his costs, even though he contest the will. This is what is usually meant by proving a will in Chancery.

As to the right to maintain a bill to perpetuate testimony, there is no distinction whether it respects a title or claim to real estate or to personal estate, or to mere personal demands, or whether it is to be used as matter of proof in support of the plaintiff's action, or as matter of defence to repel it. And the bill will lie not only in cases of a private penalty or forfeiture without waiving it, where it may be waived, as in cases of waste or of the forfeiture of a lease, but also in cases of public penalties, such as for the forgery of a deed, or for a fraudulent loss at sea.

A plaintiff desiring to perpetuate evidence, must show by his bill that he has some interest in the matter, and that it may be endangered if the testimony in support of it be lost. If the interest be a present vested one, it is immaterial how minute such interest may be, or how distant the possibility of its coming into actual possession and enjoyment may be.

By 5 & 6 Vict., c. 69, § 1, after reciting, "that it is expedient to extend the means of perpetuating testimony in certain cases," it is enacted, "that any person who would, under the circumstances alleged by him to exist, become entitled upon the happening of any future event, to any honor, title, dignity, or office, or to any estate or interest in any property real or personal, the right or claim to which cannot by him be brought to trial before the happening of such event, shall be entitled, from and after the passing of this act, to file a bill in the High Court of

Chancery to perpetuate any testimony which may be material for establishing such claim or right; and that all laws, rules, and regulations not contrary to the provisions of this act, now in force or in use in suits to perpetuate testimony, or respecting depositions taken in such suits, or the punishment of perjury committed in making such depositions, shall be in force, and used and applied in all suits to be instituted under the authority of this act, and in respect to depositions taken in such suits."

It is enacted by § 2, "that in all suits which may be instituted under the authority of this act, touching any honor, title, dignity, or office, or any other matter or thing in which her Majesty her heirs or successors may have any estate or interest, it shall be lawful to make the Attorney General for the time being a party defendant thereto; and that in all proceedings in which the depositions taken in any such suit in which the Attorney General for the time being was so made a defendant, may be offered in evidence, such depositions may be admissible notwithstanding any objections to such depositions upon the ground that her Majesty her heirs or successors were not parties to the suit in which such depositions were taken."

Bills to take testimony *de bene esse*, are sometimes confounded with these bills. But there is a broad distinction between them. Bills to perpetuate testimony can be brought by persons only who are in possession under their title, and who cannot sue at law, and thereby have an opportunity of examining their witnesses in such suit. But bills to take testimony *de bene esse*, may be brought not only by persons in possession, but by persons who are out of possession, in aid of the trial at law. Also these bills can only be brought when an action is depending, and not before. See *DE BENE ESSE, INTERROGATORY*.

The bill must state that no action can be immediately brought, otherwise it is demurrable. The court will not permit the depositions to be published except in support of a suit or action, and then only after the death of a witness, or in case of his being sick or incapable of travelling, or being prevented by accident from attending to be examined. The defendant is entitled to examine witnesses under the plaintiff's commission. If the bill is sustained, and the testimony is taken, the suit terminates with the examination, and of course is not brought to a hearing. The defendant is then entitled to apply by motion as of course, for his costs, upon the simple allegation that he did not examine any witnesses. 1 *Madd. Ch. Prac.* 253; 2 *Story's Eq. Jurisp.* 661; *Story's Eq. Plead. c. vii.*

PERPETUITY, duration to all futurity; exemption from intermission or ceasing. It is odious in law, destructive to the commonwealth, and an impediment to commerce, by preventing the wholesome circulation of property. See **ACCUMULATION**.

PER QUÆ SERVITIA, a judicial writ issuing from the note of a fine, and lay for cognisee of a manor, seignior, chief rent, or other services, to compel him who was tenant of the land at the time of the note of the fine levied, to attorn unto him. *O. N. B.* 155.

PERQUISITE, something gained by a place or office over and above the stated wages; anything gotten by industry or purchased with money different from that which descends from a father or ancestor; also, fines of copyholds, heriots, amerciaments, &c.

PERQUISITOR, a searcher.

PER QUOD (whereby), a phrase made use of by a plaintiff in his declaration, in the averring of particular damage to have happened, without which an action would not have been maintainable.

Per rationes pervenitur ad legitimam rationem. Lit. § 386.—(By reasoning we come to legal reason.)

PERSON, a man or woman; the state or condition whereby one man differs from another.

Persons are divided into, 1, *natural*, such as God formed them; and 2, *artificial*, such as are devised by human laws for purposes of society and government, who are called corporations or bodies politic. 1 *Bl. Com.* 123.

Persona conjuncta æquiparatur interesse proprio. Bacon.—(A person united equals one's proper interest.)

Personæ regis, mergitur persona ducis. Jenk. Cent. 160.—(The person of duke merges in that of king.)

PERSONABLE, the being able to hold or maintain a plea in court; also, capacity to take anything granted or given. *Plowd.* 27.

PERSONAL, any movable thing, either living or dead.

PERSONAL ACTION, one brought for the specific recovery of goods and chattels, or for damages or other redress, for breach of contract, or other injuries, of whatever description, the specific recovery of lands, tenements, and hereditaments only excepted.

Personal actions are divided into two classes;

I. *Ex contractu*, comprehending—

(a) Promises, or *assumpsit*.

(b) Debt.

(c) Covenant.

(d) Account.

(e) Annuity.

(f) *Scire facias*.

(g) *Detinue*. See *Walker v. Needham*, 3 *Man. & Gr.* 55.

II. *Ex delicto*, comprehending

(a) Case.

(b) Trespass.

(c) Replevin, the practice of which is peculiar, and is given under the head "Replevin."

(d) Trover.

The following is a sketch of the mode of proceeding in personal actions, excepting replevin: which see.

The 2nd sec. of 1 & 2 Vict., c. 110, enacts, that all personal actions in any of the superior common law courts at Westminster shall be commenced by writ of summons.

Now these are the particulars to be attended to in the preparation of a writ of summons:—It should be addressed properly to the defendant, setting forth his true christian and surname in full, or if the action be brought upon a bill of exchange or other written instrument, then in the same manner as he is therein designated, either by initials or contractions. The defendant's residence, or supposed residence, must be mentioned for the purpose of having a copy of the writ served in the county into which the writ is issued; but it is not necessary to state either the number of the defendant's house, or the parish. When a plaintiff is suing or a defendant is sued as executor, administrator, or assignee, it is not necessary to describe him as such in the writ, though, I apprehend, in order to render a defendant executor or administrator liable for a *devastavit*, i. e., the wasting of his testator's goods, he should be described in his representative character. A plaintiff in a *qui tam* action needs not to be so described. *Qui tam*, or popular actions, are informations exhibited against any person on a penal statute, at the suit of the Queen and the party who is informer, where the penalty for the breach of the statute is to be divided between them. All the plaintiffs and all the defendants must be inserted in one writ, and, if there are several writs into several counties, all the parties should be named in each. The form of action must be set forth: the following are the most usual forms of action—on promises, of debt, of covenant, of detinue, on the case, of trespass. The writ is tested, i. e., witnessed in the name of the Lord Chief Justice; or Lord Chief Baron of the court out of which it is issued, and dated of the day of its issuing. The memorandum subscribed fixes the duration of the writ, and provides that it is to be served within four calendar months from and including the day of its date, and not afterwards. The memoranda to be indorsed are the name and place of abode of the attorney suing it out, and if he sue it out as agent, then the name and place of abode of the attorney for whom he is agent, or if sued out by the plaintiff in person, then with his full name and address. Where the action is for a debt, the debt and costs must be also endorsed. The writ being thus prepared, is then sued out: a *præcipe* for the office is made, and this is lodged with the proper officer, who signs and seals the writ. If at this stage of the case, the writ is found to be incorrect in any of the particulars just described, it can be made correct and resealed before service. A copy of the writ must be *personally* served upon each defendant within the county in which the defendant is described in the writ as residing, or within two hundred yards of its border, by

any person capable of reading or writing, and at any time of the day (Sundays excepted), and the original writ must be shown to the defendant, if he require it: personal service will be dispensed with if the defendant's attorney endorse on the writ an undertaking to appear to it in due time, or if an action be against the printer, &c., of a newspaper, the copy may be left at the place set forth in the declaration of proprietorship, lodged at Somerset House. Service on the husband alone, or an officer of a corporation, will be sufficient. Within three days after service of the writ, the party who served it must endorse upon it the day of the week, month, and year of such service, otherwise the plaintiff could not enter an appearance for the defendant.

If the plaintiff, after service, discover any irregularity in the writ, he should give defendant notice not to appear to it, and issue another; or, if the defendant have appeared, the plaintiff should also tender him his costs. If the defendant discover any irregularity, he should apply to the court or a Judge to set the irregular proceeding aside, upon the proper affidavit.

If the defendant or any one of them be not served within the four calendar months, the writ must be continued by an *alias* writ, which is in the same form as the original writ; but after the words "we command you," the words "as before" are inserted; and the *alias* may be continued by a *pluries* writ, but instead of the words "as before," the phrase "as often we have commanded you" is inserted. Concurrent writs may also be issued against the same defendant into different counties, when the defendant appears to be restless, and is continually going from one county into another; but only the costs of one writ will be allowed.

The defendant has eight days to enter an appearance for himself after service; and if he do not do so, the plaintiff may, on the ninth day, enter an appearance for him, *sec. stat.*, i. e., *secundum statuti auctoritatem*.

For instance, suppose a defendant be served on a Wednesday, he has till the next Wednesday inclusive to enter an appearance; the plaintiff can do so on the Thursday morning.

The appearance is thus entered, and appearance piece is filled up with the names of the parties, according with the writ, in this manner: if it be entered by the plaintiff, then the words "according to the statute," are added, and an affidavit of the service of the writ must be annexed; it is then lodged with the proper officer. The entry of the appearance by the defendant is a waiver of all irregularities (if any) in the writ and service.

It is sometimes the case that a defendant keeps out of the way to avoid service of a writ; and then, in order to entitle the plaintiff to a *distringas* to compel appearance, he must have proceeded in this manner: two several applications should be made at

the defendant's actual or last place of abode on two different days or occasions, and that on each of such occasions you should apprise the person whom you see of the nature of your business, and say that you will call again on a future day, naming the time, thus endeavouring to see the defendant, and on the last occasion, a copy of the writ of summons must be left; such facts must be collected, so as to enable the person making the necessary affidavit to swear that he believes the defendant keeps out of the way to avoid such service. If his residence be unknown, it must be sworn that the party has used his utmost endeavours to serve him.

Writs of *distringas* are granted for two purposes, but not in the alternative. For instance, if the defendant be in this country, and he cannot be served, the application for the *distringas* must be to compel his appearance; but if he be out of the country, the application must then be for an outlawry. The order for the *distringas* is thus obtained: in term time by delivering a brief to counsel, with the affidavit: "to move for a *distringas* to compel the defendant's appearance." The rule is absolute at once. In vacation, by laying the affidavit before a Judge at chambers, and upon his approval, he makes the order. The *distringas* is issued exactly like the summons, but you must produce the rule or order to the officers signing and sealing the writ. The form of a *distringas* differs from the summons in its being addressed to the sheriff of the county in which the defendant's place of abode is situated; in its being made returnable in term, not being less than fifteen days after its *teste*, bearing date on the day of its issuing, and in the form of the notice at its foot. The observations as to the irregularity of the summons will be applicable to this writ. The sheriff executes the writ through his officer, who distrains upon the defendant's goods and chattels to the amount of 40s., or less, if he have no more, delivering to the defendant a copy of the *distringas* or leaving it at his residence. On the ninth day after the return of the *distringas*, search if defendant have appeared, and if he have not, the plaintiff can enter an appearance for him without affidavit or leave from the court. If the sheriff cannot execute the *distringas*, direct him to return it *non est inventus* and *nulla bona*; on the ninth day after the return, search if defendant have appeared, and if not, then upon an affidavit of the sheriff's return, and that diligent means were used to execute the *distringas*, and that defendant keeps out of the way to avoid service, the court or a Judge will make an order to allow the plaintiff to enter an appearance for the defendant.

It is sometimes advisable to hold the defendant to bail, the practice relating to which has undergone great alteration under the 1 & 2 Vict., c. 110. Great misapprehension exists as to the operation of this act.

Now, arrests with reference to this act are of two sorts; one, on mesne process, i. e., arresting a defendant in the first instance so as to hold him to bail to abide the event of the action, unless he settle the demand: the other, arresting defendant in execution, after plaintiff has obtained a judgment, for satisfaction of such judgment and cause of action.

Arrest upon mesne process is abolished by this act, except a plaintiff in any action in any of her Majesty's superior courts at Westminster, in which the defendant is now (i. e., at the time the act came into operation, October 1, 1838,) liable to arrest, whether upon the order of a Judge, as was always the case in trover, or without such order, shall, by the affidavit of himself or of some other person, show to the satisfaction of a Judge of one of the said superior courts, that such plaintiff has a cause of action against the defendant to the amount of 20*l.* or upwards, or has sustained damage to that amount, and that there is probable cause for believing that the defendant is about to quit England unless he be forthwith apprehended, it shall be lawful for a Judge, by a special order, to direct that such defendant shall be held to bail for such sum as such Judge shall think fit, not exceeding the amount of the debt or damages. This order may be made at any stage of the proceedings before final judgment.

The practice on the part of the plaintiff is as follows: sue out a writ of summons, which needs not be served until after the arrest—prepare the necessary affidavit—when sworn, annex a copy of the writ of summons to it, and lay it before a Judge at chambers, who, if satisfied, will make an order to hold the defendant to bail; then, within the time mentioned in this order, prepare a writ of *capias*. It is addressed to the sheriff of the county in which the defendant resides; but if the sheriff be an interested party, it is then directed to the other sheriff alone, if there be two, if not, to the coroner; but if he be interested, then to persons nominated by one of the masters, usually called elizors. If the writ is issued into the counties palatine of Lancaster or Durham, then to the chancellor or his deputy, who issues his mandate to the sheriff to execute the writ. The same observations as to the summons will apply to the *capias*, with these additions, that the defendant's estate or degree must be added, and the amount of the bail must be indorsed. The writ is in force for one calendar month from its date, and if *alias* and *pluries* writs be required, a new order must be obtained from a Judge for that purpose.

There are certain persons who cannot be holden to bail: for example—the royal family, peers of the realm, members of Parliament during the session of Parliament, and for a convenient time afterwards and before, usually understood to be forty days,

ambassadors and their servants, the Judges, serjeants at law ; but barristers may, unless they are engaged upon a cause or proceeding in court, so also the attorneys and officers of the court.

Parties to a suit, witnesses, &c., bail, bankrupts, after surrender and protection, and after obtaining their certificate ; insolvent debtors who have passed the court, *femes covertes*, executors, administrators, and heirs, as such, petty officers, or seamen on board any of her Majesty's ships, except for a debt above 30*l.*, contracted before entering the service ; and this provision extends to soldiers and marines ; where the defendant has been before arrested for the same cause (*nemo debet bis vexari pro eadem causa*) ; where the defendant has been wrongfully arrested or detained in custody, he cannot be lawfully detained in custody under other process, at the suit of the same plaintiff, though regularly issued.

It is the duty of the sheriff to execute the writ in a reasonable time after he receives it, and to arrest the defendant at the first opportunity. The arrest is made within the county, to the sheriff of which the writ is directed, and at any time of the day or night, within one calendar month from the date of the writ. It cannot, however, be effected on a Sunday, although bail may take their principal on that day, and, the defendant, after a negligent escape, may be retaken upon a Sunday. A copy of the writ must be delivered to the defendant on his arrest. Within six days of the arrest, the sheriff's officer must indorse on the writ the true day of the execution thereof, whether by service or arrest.

If the plaintiff's cause of arrest be in anywise improper, the defendant should proceed thus : he should apply to a Judge or the court in which the action has been brought, for an order or rule on the plaintiff to show cause why the defendant arrested should not be discharged out of custody, such order or rule will be made absolute or discharged accordingly, the costs thereof being discretionary. Any order made by a Judge may be discharged or varied by the court, on the application of either party. It will be necessary, in this application on the part of the defendant, to refute the facts sworn to in the plaintiff's affidavit, by an affidavit of the defendant or some other person. If an order be made in favour of the defendant, a copy thereof should be served on the plaintiff's attorney, and also on the warden, marshal, or gaoler of the prison in which the defendant is in custody, and thereupon the defendant is discharged.

But if the arrest be regular and legal, then the defendant must remain in custody, unless he make deposit of the sum indorsed on the *capias*, together with 10*l.* for costs, with the sheriff, or until he shall have given a bail-bond to the sheriff, in two sufficient sureties, conditioned for the defendant's appearance at the day and in such place as

by the writ is required. The sheriff's officer prepares the bail-bond, which is for the sum indorsed on the writ and no more, and it must be executed on or before the eighth day limited by the process for putting in bail. If the defendant do not appear to the writ according to the condition of the bail-bond (if he have given one), that is, if he do not put in *special bail* within eight days inclusive after the execution of the writ, or do not perfect special bail, or render himself in due time, the bail-bond is forfeited, and the plaintiff has the option either of taking an assignment of it and bringing an action thereon, or of proceeding against the sheriff to compel him to return the writ and bring in the body of the defendant, or, in other words, to put in and perfect special bail, under the penalty of an attachment, if he omit so doing. If the bail to the sheriff be good and sufficient persons, it is usual, and in most cases advisable, to take an assignment of the bail-bond and proceed on it, in preference to proceeding against the sheriff.

Special bail, or bail *above*, are two sufficient persons who undertake, generally, that if the defendant be condemned in the action, he shall satisfy the costs and condemnation, or render himself to the custody of the marshal, or, that they will do it for him. In lieu of special bail, the defendant, if he have made a deposit already with the sheriff, must allow such sum, and pay 10*l.* additional as a security for costs to remain in court, and enter a common appearance. Bail is usually put in by the defendant and his attorney, but it may be put in by the sheriff or the bail to the sheriff, *i. e.*, the bail *below* for their indemnity, or, by an attorney, in pursuance of his undertaking. It must be put in within eight days after the arrest, inclusive of the day of arrest. Bail may be put in before a Judge in town, or (in vacation) before a commissioner, or a commissioner in the country, or a Judge of assize in his circuit. It may be put in *absolutely*, which must be by consent of the plaintiff or his attorney, but is not usual in practice, or *de bene esse* (*i. e.*, conditionally), subject to the plaintiff's approval or exception. The Judge's clerk takes the bail, and a bail-piece is duly filled up and filed. Four days' notice of putting in bail must be given to the plaintiff's attorney when the bail justify at the time of putting in, otherwise this notice is not usually given until after. Affidavits of justification, stating that each bail is worth the sum required, over and above his debts, and every other sum for which he may be then bail, should accompany the notice of bail, for if the plaintiff except to such bail, and they be allowed, he will have to pay the costs of justification. If the plaintiff's attorney deem the bail sufficient, he will proceed in the action, but if otherwise, the plaintiff's attorney enters his exception, within twenty days after notice of bail, in the bail-book at the Judge's cham-

bers. But if the defendant have given notice of justifying at the time of putting in, and accompanied it with the affidavits of justification, the exception must be entered *one day or more* before the day of putting in, &c., and also give notice of exception *one day or more* before: in other cases, within twenty days after the service of the notice of bail, notice of exception must be given. If plaintiff require time to inquire after bail, he gives *one day's* notice thereof, such time not to exceed three days in town and six in country cases. Bail must justify within four days after notice of exception, and two days' notice of justification is sufficient. Bail justify in open court or before a Judge at chambers. The grounds of opposition to bail are, any defect or irregularity in the proceedings—that they are not housekeepers or freeholders—not worth the sum—are foreigners—privileged persons—guilty of perjury—outlawed, &c. After bail have justified, get a rule of allowance, and serve a copy on the plaintiff's attorney. The practice of taking bail in the country is substantially the same; but the bail-piece must be transmitted and filed within eight days, unless defendant reside more than forty miles from London, then within fifteen days after the taking thereof.

The pleadings in a personal action at common law is a very important portion of the proceedings; the first pleading is called the declaration, being a statement of the plaintiff's cause of action in written technical phraseology. The plaintiff may declare, after appearance, either in term or vacation, except between the 10th August and 24th October, which is now, in strictness, the only vacation. The plaintiff must declare before the end of the term next after the execution of the writ (*i. e.*, the service of it), otherwise the defendant may sign judgment of *non pros* against him; should the plaintiff have appeared *sec. stat.*, the defendant could not sign judgment of *non pros*. But if no such *non pros* be obtained, then he may declare at any time within a year from the execution of the writ, unless otherwise ordered by the court or a Judge, or he will be deemed out of court, and a stay of proceedings under the Interpleader Act, or by injunction from the Court of Chancery, will not prevent the running of the year. Where one of two defendants has been duly served with process, and the other cannot be served, the plaintiff, upon affidavit, should apply to the court in term, and to a Judge in vacation, for time to declare against the defendant duly served, until the appearance or outlawry of the other; for a declaration delivered to the one served, and afterwards to the other when he appears, would be clearly irregular. If the plaintiff be not ready to declare within the time limited, a side-bar rule for a lunar month's time to declare can be obtained at one of the masters, and a copy of it served upon the defendant's attorney or agent. If the defendant wish to compel the plaintiff to

declare, he should obtain from one of the masters, upon counsel's signature, a *peremptory rule* to declare within a certain time, which rule is absolute in the first instance; if the plaintiff do not declare within the time so limited, the defendant may after a four day written demand of declaration, sign judgment of *non pros*. If the defendant have appeared, the declaration is delivered to his attorney before nine o'clock at night, if an appearance *sec. stat.* have been entered, the declaration must be filed with one of the masters, and a notice of the declaration delivered to or left at the last or most usual place of abode of the defendant; and if the residence of the defendant be unknown, then upon affidavit of that fact and that due diligence has been used to ascertain it, a Judge will grant leave that the notice of declaration be posted in the Master's Office; and a declaration is not deemed filed until this notice of declaration is either served or posted as aforesaid. The plaintiff must, with every declaration, if delivered, or with the notice of declaration, if filed, containing any common *indebitatus* counts, deliver full particulars of his demand under those counts, where such particulars can be comprised within three folios; and where such particulars cannot be comprised within three folios, he must deliver such a statement of the nature of his claims, and the amount of the sum or balance which he claims to be due, as may be comprised within that number of folios. And if any declaration or notice be delivered without such particulars or statement, the plaintiff will not be allowed any costs of any summons on the part of the defendant, for a Judge's order to deliver such particulars. The declaration should correspond with the writ, 1st, in the parties, for if the writ be against one, and the declaration against two, or *vice versa*, unless he discontinue as to one, it will be set aside; 2dly, in the character in which the parties sue or are sued, but there is a distinction between general process and process sued out *en autre droit* or *qui tam*. On process sued out generally in the plaintiff's name, he may declare for a cause of action *en autre droit*, as executor, &c., or *qui tam*. But if the plaintiff be described in the writ as suing *en autre droit* or *qui tam*, he cannot declare for a cause of action in his own right; 3rdly, in the form of action; for if the form of action declared in be different from that stated in the writ, the declaration may be set aside for irregularity. The declaration must be entitled in the proper court, and of the day of the month and year on which it is filed or delivered: the *venue* must be stated in the margin: several counts are not allowed unless a distinct subject matter of complaint is intended to be established as to each; and if more than one count is used in violation of this rule, the defendant may apply to a Judge to strike out the superfluous counts. Before the defendant can be compelled to plead, or the

plaintiff sign judgment for want of a plea, three things are necessary, a notice to plead, a rule to plead, and sometimes a demand of plea. The notice to plead, which must state the time limited for pleading, is indorsed on the declaration, when it is delivered, and contained in the notice of declaration, when it is filed. The time to plead is four days, if the *venue* be laid in London or Middlesex, and the defendant reside within twenty miles; or within eight days, if the *venue* be laid in any other county, or the defendant reside above twenty miles from London. The time is reckoned exclusive of the delivery of declaration or service of the notice of declaration, and inclusive of the last day, unless it be a Sunday, Christmas-day, or Good Friday, or a day appointed for a public fast or thanksgiving, when they will be reckoned exclusive of that day also. The following days are not reckoned: the days between Thursday next before and Wednesday next after Easter-day, Christmas-day and the three following days, and the time between the 10th August and 24th October. If four terms have elapsed since the delivery or filing of the declaration, the defendant must have an entire term's notice to plead. If the plaintiff amend declaration, after plea, the defendant has two days, exclusive of the day of amendment and after payment of costs, to alter his first plea or plead another. The four day rule to plead must be entered at the Master's Office in all cases, whether the defendant have appeared or not, unless he be bound by a rule of court, or a Judge's order for time to plead. It may be entered at any time *after* the delivery or filing, and notice of the declaration. The demand of plea, in writing, must be made in all cases where the defendant has appeared, and it is usually endorsed on the declaration. It is not necessary to make it, where the plaintiff has entered an appearance for the defendant, or where the defendant is bound by a Judge's order to plead within a limited time, or where the declaration has been amended after plea pleaded. If defendant require further time to plead, he takes out a summons, and serves a copy of it on the plaintiff's attorney or agent, who sometimes endorses a consent upon it, or attends it before the Judge: but if the first summons is not attended, a second is issued; and if that be not attended, upon an affidavit of service and attendance, the Judge makes an order *ex parte*. But it is usually attended, and the Judge gives a longer or shorter time as he deems fit, after hearing both sides. The order is then drawn up and served. The further time to plead is reckoned exclusive of the day of the order, and inclusive of the day on which it expires. When an order is drawn up "on the usual terms," it means pleading issuably, rejoining gratis, and taking short notice of trial. By "pleading issuably" is meant, pleading what amounts to the general issue, or any other plea upon which the plaintiff may take issue, and go to trial upon the merits, either

upon an issue in fact or in law. By "re-joining gratis" is meant, not only dispensing with the common four day rule to rejoin, but also with all its consequences, so that the defendant is bound to rejoin within twenty-four hours after delivery of the replication, and a demand of rejoinder. "Short notice of trial" is, in country causes, four days at least before the commission day, and in town causes, two days. If the defendant do not plead, the plaintiff may forthwith, after the time has expired, sign judgment for want of plea, and this judgment, in actions of debt, is final in the first instance; but in actions on promises, the first judgment is interlocutory, and a writ of enquiry before the sheriff, or a rule to compute before the master, must be had, before final judgment can be signed, and hence the advantage of *debt* over *promise*, when either will lie, and the defendant do not plead. If the declaration be filed, the defendant must take the same out of the master's office before he pleads. The plea must be delivered before nine at night. Pleas concluding to the country, need not be signed by counsel; but *special* pleas concluding with a verification must be signed by counsel. Several pleas are not allowed, unless a distinct ground of answer or defence is intended to be established in respect of each; pleas in violation of this rule may be struck out with costs. Leave to plead several matters must be obtained of a Judge, upon a summons accompanied with a short abstract of such pleas. Upon the Judge making an order, take it to the Master, with the abstract or statement of the intended pleas, and he will draw up the rule to plead several matters, which must be annexed to the pleas; if the defendant plead several pleas without a rule, the plaintiff may sign judgment.

There is no time limited for the plaintiff to reply, or the defendant to rejoin, unless they have been served with a four day rule so to do; and further time may be obtained as in the case of the plea. The days mentioned, during which no declaration can be filed or delivered, apply to all the subsequent pleadings; and the replication must be delivered before nine at night, and if it conclude with a verification, it must be signed by counsel; and if it be not duly delivered, after rule, defendant may sign judgment of *non pros*. The plaintiff is sometimes advised to new assign, instead of replying, and after the delivery of the new assignment (which is, in effect, a second declaration), the defendant is ruled to reply to it, in the same manner as upon the original declaration. If the replication conclude with a verification, the plaintiff rules the defendant to rejoin, although he is under terms to *rejoin gratis*, but it is otherwise if it conclude to the country. The plaintiff may be ruled to sur-rejoin, and the defendant to rebut, &c., in the same manner. If the plaintiff do not reply, sur-rejoin, or sur-

rebut, when ruled so to do, the defendant may sign judgment of *non pros*; and when the defendant do not rejoin or rebut, it is deemed an abandonment of the plea, and the plaintiff may strike out all the previous pleadings having reference to the matter omitted to be rejoined or rebutted to, and sign judgment as for want of a plea. These, then, are the several pleadings in a personal action at common law.

The next step is the issue, which is not generally said to be joined until the *similiter* is added, which is in these words: "And the plaintiff doth the like, &c." If the defendant's pleading conclude to the country, the plaintiff adds the *similiter*, or the plaintiff, if all his own pleadings conclude to the country, may add the *similiter* and make up the issue. The issue is a fair copy of all the pleadings in separate paragraphs, with their dates and counsels' signatures (if any), and the usual conclusion, "Thereupon the sheriff is commanded, &c." Upon trials before the sheriff of causes of action under 20l., by Judge's order upon a summons for that purpose, the conclusion of the issue differs somewhat, and a writ of trial is necessary. There is no time limited for making up the issue, and delivering it to the defendant; but if the plaintiff will not make up the issue, the defendant may make it up and deliver it to the plaintiff's attorney, in order that he may carry down the record to trial by proviso, *i. e.*, provided the plaintiff do not. The notice of trial is in writing, and must, in all cases, be given to the opposite party. The plaintiff in a town cause is not bound to give notice of trial until the term after that in which issue is joined: in country causes, if issue be joined in an issuable term, or in the vacation of a non-issuable term, the plaintiff is not bound to give notice of trial until the second assizes; but if issue be joined in a non-issuable term, he must give notice for the next assizes. It is usually given on the back of the issue, but it may be given on a separate piece of paper duly entitled in the court and cause. The following are the times:—When the trial is to be had in Middlesex, and the defendant lives within forty miles of London, eight days notice of trial must be given, exclusive of the day on which it is given, and inclusive of that on which the trial is to be had; or, where there are several defendants, if any one of them reside within such distance, eight days' notice will be sufficient; but if the defendant or all the defendants reside about forty miles from London, then fourteen days notice must be given. If notice be given for the adjournment day, eight days' notice before the first day of the sittings after term, if the defendant reside above forty miles from London, and if within that distance, four days' notice before such first day must be given: ten days' notice of trial before the commission-day must be given at the assizes; before the sheriffs of London or Middlesex, eight or fourteen days, according

to the defendant's residence, or ten days' notice, when it is to be had in any other county. Sunday, Christmas-day, Good Friday, or a public fast or thanksgiving-day, is reckoned as one of the days in these notices, unless it be the last: and the days between the Thursday before Easter-day and the Wednesday after, are reckoned in notices of trial and inquiry, although not in other proceedings. Where a cause is made a *remanet* from one sittings to another, or put off by order of *Nisi Prius*, a fresh notice of trial is not necessary. If a plaintiff is not ready to go to trial, he may, at the sittings in London or Middlesex, instead of countermanding his notice of trial, continue it from one sittings to another, but not to the adjourned sittings, by giving two clear business days notice, as Monday for Wednesday: it can be given only once in a term, and not after a countermand. Where no proceedings have been had within four terms exclusive after issue joined, an entire term's notice of trial must be given. As to notice of countermand, in country cases, or where the defendant resides more than forty miles from town, six days' notice before the time mentioned in the notice of trial, in town cases, where the defendant resides within forty miles of London, two days' notice.

The next question is as to the evidence. And first, as to obtaining admission of documents before trial. Either party after plea pleaded, and a reasonable time before trial, may give notice to the opposite party, to inspect and admit certain written or printed documents in his possession, which are intended to be adduced in evidence; and unless the opposite party shall consent, by indorsement on such notice, within forty-eight hours to make the admission specified, the party requiring such admission, may call on the party required, by summons, to shew cause before a Judge, why he should not consent to such admission, or, in case of refusal, to pay the costs of proving them. And if he do not consent, the Judge (if he think the application *reasonable*), may order that the costs of proving any documents specified in the notice (which shall be proved at the trial to the satisfaction of the Judge or other presiding officer, certified by his indorsement thereon) shall be paid by the party so required to admit, whatever may be the result of the cause: but time may be given for enquiry or examination of the documents intended to be offered in evidence. No costs will be allowed unless such notice be given. If the adverse party be in possession of any written instrument, which would be evidence in your favour, if produced, there should be served upon him a notice to produce it at the trial; this notice should specifically set forth the document, and it should be served a reasonable time before the trial. If the adverse party will not produce it, then, upon proving the service of the notice to produce, you will be permitted to prove the contents

of the instrument by a copy or other secondary evidence, in the same manner as if it had been destroyed or lost. Your witnesses should be *subpœnaed* a reasonable time before trial; if they will attend *voluntarily*, they need not be served with a *subpœna*, but if a person be actually present at a trial, he may refuse to be sworn as a witness, unless he have been duly *subpœnaed*. Four witnesses may be included in one *subpœna*, which is issued like a writ of summons; it must be *personally* served, and the original *subpœna* must be shown, and if the cause be made a *remanet*, the *subpœna* must be resealed and a copy again served. If a person, who is not a party to the cause, or a defendant who has suffered judgment by default, have in his possession any written instrument, &c., which could be evidence for you at the trial, instead of the common *subpœna*, he must be served with a *subpœna duces tecum*, commanding him to bring the written instrument with him, and produce it at the trial. If a witness be in custody at the time of the trial, the only way of bringing him into court is by *habeas corpus ad testificandum*, which is obtained upon motion in court or application to a Judge at chambers, upon an affidavit that he is a material witness, and willing to attend: the court will, thereupon, make a rule, or the Judge grant a fiat for the writ. The witness's expenses must be tendered to him at the service of the *subpœna*, and a witness attending a court is privileged from arrest. There are three ways of proceeding against a witness duly *subpœnaed*, who refuses or neglects to attend at trial, 1st, by attachment; 2nd, by action on the statute 5 Eliz., c. 9; and, 3rd, by action on the case for consequential damages on his non-attendance.

The Nisi Prius Record is engrossed upon parchment, it is a copy of the issue to the end of the award of the *venire*, and then it proceeds, "Afterwards, on the ——— day of ——— (which is the date of the *distringas* or *habeas corpora*), the jury between the parties aforesaid is respited here, until the ——— day of ——— (the return day of these writs, &c)." The record, in town causes, must be sealed on or before the day appointed by the Chief Justice in the sittings paper for the trial; in country causes, it cannot be sealed after three weeks from the end of the term, unless a Judge's order is obtained for that purpose. The jury processes, in the Queen's Bench and Exchequer of Pleas, are the *venire facias* and the *distringas*, and in the Common Pleas, the *venire facias* and *habeas corpora juratorum*; these writs are sued out at the same time, and, upon being delivered to the sheriff or his agent, he immediately returns them, and causes the jurors to be summoned. The court will grant a rule for a special jury to be struck by the Master, upon the application of either party; upon obtaining the rule, an appointment is obtained from the Master upon it, and a copy of the rule and appointment is

served upon the opposite attorney and upon the under-sheriff, or, in London, upon the secondary. All the parties attend the Master, and the special jury struck. The party, however, upon whose application it is struck, shall bear all the expenses occasioned by the trial of the cause by such special jury, and shall not be allowed upon taxation of costs any more or other costs than he would have been entitled to if the cause had been tried by a common jury, unless the Judge shall, immediately after the verdict, certify, upon the back of the record, that it was a proper cause to be tried by a special jury. The Nisi Prius Record, with the particulars of the plaintiff's demand, and particulars (if any) of the defendant's set-off, annexed, must be entered with the Judge's Marshal, in town causes, two days previously to the sittings in term, otherwise a *ne recipiatur* may be entered by the defendant; at the sittings after term, it must be entered the first of the sittings after term in Middlesex, and two days before the adjournment day in London. The record must be entered with the Marshal before the first day of the sitting of the court after the commission day at the assizes. The brief containing a copy of the pleadings, a statement of the merits of the case, together with the substance of the evidence to which the witnesses will depose, is delivered to the counsel, and the cause is called on in its turn. Special jury causes are tried in the sittings after term. When the jury come to the book to be sworn, either party may challenge them; challenges are of two kinds, 1st, to the array, which is an objection to all the jurors returned by the sheriff, collectively, not for any defect in them, but for some partiality or default in the sheriff, or his under-officer, who arrayed the panel; 2nd, to the polls, which is an exception to one or more jurors, who have appeared, individually classed under the four following heads: *propter honoris respectum*; *propter defectum*; *propter affectum*; and *propter delictum*. If a sufficient number of jurors do not appear, or if, after challenge, a sufficient number do not remain to make a jury, either party may pray a *tales*, and the sheriff will return such men, duly qualified, as shall be present, or can then be found to serve on such jury, and will add and annex their names to the former panel. The junior counsel of the plaintiff opens the pleadings, which is, stating shortly the substance of them to the jury, and the points upon which issue has been joined, after which, if the *onus probandi* or proof of the issue rest upon plaintiff, as where the general issue or common plea in denial of the contract or wrong stated in the declaration is pleaded, the senior or leading counsel states his case to the jury, and after calling and examining witnesses in support of it, the counsel for the defendants are heard, and, if they call any witnesses, the plaintiff's counsel have the general reply. The general rule is, that the party, who has to maintain the

affirmative of the issue, must begin to give the evidence, and this is in conformity with the maxim, *Ei incumbit probatio, qui dicit, non qui negat*. If any witness be objected to as incompetent, on the ground that the verdict or judgment in the action on which it is proposed to examine him would be admissible in evidence for or against him, such witness shall, nevertheless, be examined; but in that case a verdict or judgment in that action in favour of the party on whose behalf he shall have been examined, shall not be admissible in evidence for him, or any one claiming under him, nor shall a verdict or judgment against the party on whose behalf he shall have been examined, be admissible evidence against him or any one claiming under him; the name of every such witness shall, at the trial, be endorsed on the record or document on which the trial is had, together with the name of the party on whose behalf he was examined, by some officer of the court, at the request of either party, and shall afterwards be entered on the record of the judgment, so as to be evidence of such examination in any subsequent proceeding. After the jury are sworn, the parties frequently agree to withdraw a juror, usually at the Judge's recommendation, where it is doubtful that the action would lie; each party pays his own costs, and it is a bar to the bringing of a second action. If the plaintiff find that his evidence is not sufficient to maintain his case, he may elect to be non-suited, that he may bring a second action, either in another shape or when better prepared with evidence: and if it is thought that the facts proved do not maintain the issue, this being a point of *law*, then demur to the evidence, which has the effect of withdrawing it from the consideration of the jury, to be determined by the court in which the action was commenced. If, during trial, it is deemed expedient to object to the opinion and direction of the Judges, as to the admissibility of evidence, &c., a bill of exceptions should be tendered, which is afterwards determined in a court of error. If any matter of defence arise, after plea and before verdict, the defendant may within eight days after such matter of defence arose, unless a further time be allowed by the court or a Judge, avail himself of it by a plea to the further maintenance of the action, before the abolition of the entry of continuances, called a plea *puis darrein continuance*. In the absence of all such proceedings, however, the Judge sums up the evidence, and the jury, after consultation, return their verdict. In cases of contract and in all actions, if the Judge think there ought to be speedy execution, he will certify on the back of the record, that execution ought to issue forthwith, but this is not to affect the opposite party's right to move for a new trial, &c. The jury's verdict is either general or special: a general verdict determines both the law and the fact; but where the question of law is doubtful,

the jury give a special verdict, that is, they may find the facts of the case specially, leaving to the court the application of the law to the facts so found; or they may find a general verdict, subject to a special case stated by the counsel on both sides, with regard to the matter of law, for the opinion of the Judge or the court above, and this proceeding has this advantage over a special verdict, that it is attended with much less expense, and obtains a much speedier decision. The *postea* is the indorsement on the Nisi Prius Record; it states the day of trial, before what Judge tried, and who was the associate; the appearance of the parties by their respective attorneys or their defaults; the summoning and choice of the jury; the finding of the jury upon oath, and, according to the sort of action, the assessment of the damages, together with the occasion thereof, and the costs. The judgment is the sentence of the law, pronounced by the court, upon the matter contained in the record. If the Judge do not certify for immediate execution, then, on or after the appearance day of the return of the *distringas* or *habeas corpora*, get the record of Nisi Prius from the associate, the attorney enters the *postea* upon it in town causes, take it to the masters, who will sign judgment and tax costs. All judgments, whether interlocutory or final, shall be entered of record of the day of the month and year, whether in term or vacation, when signed, and shall not have relation to any other day. Judgments to bind lands must be registered with the senior Master of the Court of Common Pleas, and a fresh registry made every five years.

A writ of error is an original writ, issuing out of the Court of Chancery, in the nature of a commission to the Judges of the superior courts to examine the record, and to affirm or reverse the judgment, according to law. The writ is granted *ex debito justitiæ* in all cases, except in treason or felony, and it lies for some error or defect in substance, that is, not aided, amendable, or cured by the common law, or by some of the statutes of amendment or *jeofails*. It must be brought and prosecuted with effect, within twenty years after such judgment, signed or entered of record, unless the party labour under any disability, as infancy, or the like, and then within twenty years after such disability ceases. The writ should be brought and bear *teste*, even before the judgment is signed, to prevent execution. It can only be brought by him who was party or privy to the record or injured by the judgment, and who, consequently, will derive advantage from its reversal. It is brought either in the same court in which the judgment was given, or in the Exchequer Chamber, formed of the Judges of the two superior courts, who were not concerned in the judgment; and from thence to the House of Lords. The writ in all cases should correspond with the record: the Master will allow the writ, and give a note of allowance, which being served,

is a *supersedeas* of execution. Bail in error is requisite in all cases after judgment for the plaintiff in any *personal* action, whether after verdict or default, unless otherwise ordered by a court or a Judge; a party, therefore, who is plaintiff both below and above, need not give bail; if the writ be allowed before judgment, the plaintiff in error has four clear days after judgment signed, to put in bail; if allowed *after* judgment, then four clear days from the time of the allowance, and if bail be not put in within such time, the defendant in error may immediately sue out execution. Bail is put in before a Judge of the court in which the judgment is, or a commissioner in the country; and notice thereof should be given, without any delay, to the defendant in error or his attorney. The defendant in error has twenty days to accept of or except to bail; if he except, he serves a rule for better bail; the plaintiff in error has then four days to justify, giving two days' notice of justification; the mode of justifying is similar to the mode in the original action, and a rule of allowance is also served. In order to proceed with the writ of error, the record must be certified or transcribed to the court above, in order to which a transcript or copy of the record must be made out by one of the Masters, which is afterwards, with the writ of error and return, to be left in the court above, within twenty days after the allowance of the writ; within eight days after this, the plaintiff in error must assign errors, and demand a joinder in error or plea to the assignment of errors, and the defendant in error must do this within twenty days after demand, unless the time be extended by a Judge's order; when issue in law is joined, either party may set down the case for argument with the clerk of the errors of the court of error, and forthwith give notice in writing to the other party, and proceed to argument in like manner as on a demurrer, without any rule or motion for a *concilium*. Copies of the judgment of the court below, of the assignment of errors, and of the pleadings therein, must be furnished to the Judges, four clear days before argument. The common judgment for the defendant in error is, that the judgment be affirmed; but if the judgment below be reversed, the plaintiff in error shall have a writ of restitution, that he may be restored to all he had lost by the judgment. After the judgment has been affirmed or reversed in the Court of Exchequer Chamber, a writ of error may be brought upon such judgment returnable to the House of Lords. The proceedings are somewhat similar.

A writ of execution may be sued out at any time *within* a year and a day after judgment signed; after a year and a day a *scire facias* becomes necessary. The writs of execution upon judgments in personal actions, are *fi. fa.*, *elegit*, *levari facias*, and *ca. sa.* The writ of execution must pursue the judgment in the amount—as to the parties

—and in the subject-matter. The judgment, duly registered, and not the writ of execution, binds the lands of the party; but as to his goods and chattels, they are bound, at common law, by the writ of execution from its *teste*. If execution be sued out against two or more persons, and the whole amount be levied upon one, in actions *ex contractu* (unless upon a contract made with the defendants as partners in trade), the party upon whom the whole is levied, may maintain an action against the others, and oblige them to contribute their respective shares; but in actions *ex delicto* he cannot thus compel a contribution, and he is, in general, altogether without a remedy. Under a *fi. fa.* all the personal goods and chattels of the party can be seized and sold, and all money, notes, bonds, specialties, and securities for money, &c. Under an *elegit* may be extended all the debtors real and copyhold property, and also lands over which he has a disposing power, which he may, without the assent of any other person, exercise for his own benefit, and also trust estates for the benefit of the debtor. The sheriff, after executing the inquisition, must, in all cases, make a return; the *levari facias*, except in outlawry, has been completely superseded by the *elegit*. Under a *ca. sa.* the sheriff takes the body of the debtor and lodges him in prison; if a *ca. sa.* be not executed, the plaintiff may, of course, sue out any other writ of execution, or he may have an *alias* or *pluries ca. sa.*; but if it be once executed, no other writ of execution can be sued out and executed against the debtor's lands or goods, whilst he remains in custody for the same debt. If judgment be given for the defendant he may have the same writs of execution for the amount of the costs awarded to him, as the plaintiff might have had for his damages and costs, if he had obtained judgment. Consult *Chit. Arch. Prac.*; *Bagley's Prac.*; or *Lush's Prac.*

PERSONAL CHATTELS, goods or movables.

PERSONAL IDENTITY. See IDENTITY.
PERSONALITY or PERSONALTY, said of an action when it is brought against the right person.

PERSONALITY OF LAWS. All laws which concern the condition, state, and capacity of persons, as the reality of laws means all laws which concern property or things. Whenever foreign jurists wished to express that the operation of a law is universal, they compendiously announce that it is a personal statute; and whenever, on the other hand, they wish to express that its operation is confined to the country of its origin, they simply declare it to be a real statute.

Livermore uses the words *personality* and *reality*. Henry, the words *personally* and *really*. Story preferred the former, as least likely to lead to mistakes, as *personality* in our law is confined to personal estate, and *reality* to real estate. *Const. of Laws*, 23.
PERSONAL PROPERTY, chattels which

include whatever wants either the duration or the immobility attending things real. They are distributed into chattels real and chattels personal. See **CHATTELS**.

Property in personalty is either in possession, which is absolute, where a person has such an exclusive right in the thing that it cannot cease to be his without his own act or default, or qualified, arising where the subject is incapable of absolute ownership, or from the peculiar circumstances of the owners; or, in action, where a man has not the actual occupation of the thing, but only a right to it, arising upon some contract, and recoverable by an action at law.

The property of chattels personal is liable to remainders, expectant on estates for life; to joint tenancy, and to tenancy in common.

The title to things personal may be acquired or lost by occupancy, prerogative, forfeiture, custom, succession, marriage, judgment, gift, or grant, invention, contract, bankruptcy, insolvency, testament, and administration. 2 *Bl. Com.* 384.

PERSONAL RIGHTS, the right of personal security, comprising those of life, limbs, body, health, reputation, and the right of personal liberty.

PERSONAL TITHES, those that are paid out of such profits as come by the labour of a man's person; as by buying and selling, gains of merchandize, handicrafts, &c.

PERSONATION. See **FALSE PERSONATION**. *Perspicua vera non sunt probanda.* Co. Lit. 16.—(Plain truths need not be proved.)

PER STIRPES (by the right of ancestry).

PERTICATA TERRÆ, the fourth part of an acre.

PERTICULAS, a pittance; a small portion of alms or victuals. Also, certain poor scholars of the Isle of Man.

PERTINENTS, appointments. *Scotch Term.*

PERTURBATRIX, a woman who breaks the peace.

PERVISE, the palace yard at Westminster. *Soma.*

Per varios actus legem experientia fecit. 4 Inst. 50.—(By various acts experience framed the law.)

PESA, a wey or weigh.

PESAGE, a custom or duty paid for weighing merchandise or other goods.

PESSONA, mast of oaks, &c., or money taken for mast, or feeding hogs.

PESSURABLE, **PESTARBLE** or **PESTARABLE WARES**, merchandise which takes up a good deal of room in a ship.

PETER-PENCE, an ancient levy or tax of a penny on each house throughout England, paid to the pope. It was called *Peter-pence*, because collected on the day of St. Peter, *ad vincula*; by the Saxons it was called *Rome-feoh*, *Rome-scot*, and *Rome-pennyng*, because collected and sent to Rome; and, lastly, it was called *hearth-money*, because every dwelling-house was liable to it, and every religious house, the Abbey of St. Alban's alone excepted.

It was not intended as a tribute to the

pope, but chiefly for the support of the English school or college at Rome; the popes, however, shared it with the college, and at length found means to appropriate it to themselves.

At first it was only an occasional contribution, but it became at last a standing tax; being established by three laws of King Canute, Edward the Confessor, the Conqueror, &c. Edward III. first forbade the payment, but it soon after returned and continued till the time of Henry VIII., when Polydore Virgil resided here as the pope's receiver-general. It was abolished under that prince, and restored again under Philip and Mary, but was finally prohibited under Queen Elizabeth. *Chamber's Cyc.*

PETIT CAPE. See **CAPE**.

PETITION, a supplication made by an inferior to a superior, and especially to one having jurisdiction.

The subject has a right to petition the Sovereign or the two houses of Parliament, and that all commitments and prosecutions for such petitioning are illegal. But see **TUMULTUOUS PETITIONING**.

Petitions in *Chancery* are nothing more than motions stated in writing, and are resorted to where the nature of an application to the court requires a further statement than can be contained in a notice of motion. Applications in matters of lunacy and charity, or for payment of money out of court, or by parties who are under commitment, are invariably made upon petition, and special injunctions are applied for during the long vacation, upon petition.

Petitions are either—

(1) *Special*, which are always heard in court, and may be divided into (a) *cause* petitions, where the petition is presented by a party to a suit, and (b) *ex parte* petitions.

The Lord Chancellor generally confines himself to those petitions which appeal against the judgment of the courts below. Petitions intended to be heard by the Lord Chancellor, or by either of the Vice-Chancellors, are presented to and answered by the Lord Chancellor; those intended to be heard by the Master of the Rolls, are presented to and answered by him. The petition is left with the secretary of the Judge to whom it is presented, and he will get it answered, which is usually in these words:—"Let all persons interested herein attend me the next day of petitions, hereof give notice." There must, unless the court give special leave to the contrary, be at least two clear days between the service of a petition and the day appointed for hearing the petition; but in the computation of such two clear days, Sundays and other days on which the offices are closed, except Monday and Tuesday in Easter week, are not to be reckoned. 8th May, 1845, 16th order, clause 47. It should be served before eight o'clock in the evening. 22d Order, October, 1842. An affidavit of the service should be made and filed, and an office copy thereof obtai-

ned to be ready in court on the hearing. If a party be dissatisfied with an order pronounced on a petition by either of the Judges below, and seeks to reverse the same, he must present a petition of appeal, procure a certificate of its propriety, signed by counsel, and make a deposit of 20*l.* to answer costs. And a petition of appeal lies, in the last resort, to the House of Lords.

(2) *As of course.* Most things which may be moved for as of course, may also be obtained upon petition as of course.

These petitions are generally presented to the Master of the Rolls, this being the most expeditious and least expensive mode; it being ordered, "That with a view to the convenience of the suitors and their solicitors, and for the purpose of diminishing the expense of orders on petitions of course which, according to the practice of the courts, may be presented to the Master of the Rolls, one of the secretaries of the Master of the Rolls shall, upon any such petition of course (except upon petitions for setting down causes to be reheard) which shall be presented to his honour, instead of answering such petitions as heretofore, draw up the orders thereon, in such form as the Master of the Rolls shall, from time to time, direct, every such order to be signed, as passed, with the initials of such secretary, and the under-secretary shall enter, or cause to be entered, every such order, in a book to be kept at the secretary's office at the Rolls for that purpose, and shall then mark and sign such order with his initials as entered; and the suitors of the court and their solicitors shall have access to the said book, during office hours, without the payment of any fee." 29*th* Order, 21*st* December, 1833.

Petitions at *common law* are presented for various purposes, as for leave to sue or be sued by guardian, or to sue *in forma pauperis*, or to the Lords of the Treasury, for the proceeds of an outlaw's goods, or to resist an extent.

In *bankruptcy*, a petition is presented to the Lord Chancellor by the petitioning creditor and his partners (if any), or the intended bankrupt himself, stating the trading, the petitioning creditor's debt, and that the party has become bankrupt, and praying that a fiat may be issued, and prosecuted either in the town or country bankruptcy courts. A petition is also one of the three modes to come before the Court of Review. Certain insolvents also may petition a court of bankruptcy for protection, under 5 & 6 Vict., c. 116.

A petition is the proper mode of coming before the court for the relief of insolvent debtors. 1 & 2 Vict., c. 110, § 35.

The mode of obtaining redress for an improper election of a Member of Parliament, is by petition to the House of Commons.

Petitions, in this case, are either—

(I.) Original, which lie on

(a) An undue election or return of a member.

(b) When no return has been made to any writ issued for the election of any member to serve in Parliament on or before the day on which such writ is made returnable.

(c) When a writ is issued during any session or prorogation of Parliament, and no return has been made to the same within fifty-two days after the day on which such writ bears date.

(d) When any return is not according to the requisition of a writ.

(e) When the special matters contained in the return are improper.

(f) Upon an appeal from the decision of the revising barrister:—(1) where the name of any person who voted at the election was improperly inserted in the register; (2) where the name of any person who voted at the election was improperly retained in the register; (3) where the name of any person who tendered his vote at the election was improperly omitted from the register. An appeal from the barrister's decision is made to the Court of Common Pleas. 6 & 7 Vict., c. 18.

2. Supplemental in aid of original; they are either

(a) *Quia timet*, or

(b) From subsequent events, subdivided into

(1) Death.

(2) Elevation to the peerage.

(3) Member abandoning defence.

(4) Petitioners declining to proceed.

(5) Resolution of vacancy.

(6) Renewed petition.

The manner of proceeding upon such petitions is regulated by 4 & 5 Vict., c. 58, the substance of which is as follows:—Any person claiming to have had a right to vote at the election, or to be returned or elected, or alleging himself to have been a candidate thereat, may subscribe and present a petition to the House of Commons, complaining of an undue election or return, or that no return has been made according to the requisitions of the writ; but it is required that some one or more of the petitioners should enter into a recognizance, with sureties, for payment of all costs and expenses; and the sitting member, and any other persons claiming to have had a right to vote at the election (or such claimants, without the sitting member, if he decline to be a party), are entitled to oppose the petition. The list of voters intended to be objected to, together with the heads of the objection to each, are then delivered by either party to the general committee appointed by the house for such business at the commencement of each session, and the petition is thereupon referred by the house to a select committee, consisting of a chairman and six other members, the former of whom is chosen by a select body called the chairman's panel, and the latter by the general committee. This select committee (who are sworn well and truly to try the matter before them, and are empowered to examine all witnesses on

oath, a power not possessed by the house itself) then proceed to try the merits of the return, or of the election, or both (admitting, however, no objection not set forth on the list of objections which had before been delivered to the general committee), and by their decision (which is by the majority of voices) they determine whether the petitioner, or sitting member, or either of them, be duly returned or elected, or whether the election be void, or whether a new writ ought to issue; and such determination is final between the parties, to all intents and purposes, and is reported to the house at large, and entered in their journals. If the select committee report the petition, or the opposition to it, to be frivolous and vexatious, or that any particular objection made before them was of that character, the party in whose favour such report is made, is entitled to recover from the other his reasonable costs and expenses incurred in that behalf; and a similar provision is made with respect to all allegations of fact with regard to the conduct of the opposite party.

PETITION DE DROIT (petition of right), one of the common law methods of obtaining possession or restitution from the Crown of either real or personal property. It is said to owe its origin to Edward I. It may be preferred or prosecuted either on the common law side of the Court of Chancery, or in the Exchequer. It is of use when the Crown is in full possession of any hereditaments or chattels, and the petitioner suggests such a right as controverts the title of the Crown, grounded on facts disclosed in the petition itself; in which case he must be careful to state truly the whole title of the Crown, otherwise the petition will abate; then, upon the answer being endorsed or underwritten by the Crown, *soit droit fait à la partie* (let right be done to the party), a commission shall issue to inquire into the truth of the suggestion, after the return to which the Queen's attorney is at liberty to plead in bar, and the merits are determined upon issue or demurrer, as in suits between subject and subject. If the right be determined against the Crown, the judgment is that of *ouster le main* or *amoveas manus*. *Chitty's Prerog. of the Crown*, 345.

PETITION OF RIGHT, the 3 Car. I., c. 1.

PETITIONING CREDITOR, one who applies for a fiat against his trading debtor.

By 5 & 6 Vict., c. 122, § 9, it is enacted, that the amount of the debt or debts of any creditor or creditors, petitioning for a fiat in bankruptcy, shall hereafter be as follows; that is to say, the single debt of such creditor, or of two or more persons being partners, petitioning for the same, shall amount to 50*l.* or upwards, and the debt of two creditors so petitioning shall amount to 70*l.* or upwards, and the debt of three or more creditors so petitioning shall amount to 100*l.* or upwards, and that every person who has given credit to any trader, upon valuable consideration for any sum payable at a cer-

tain time, which time shall not have arrived when such trader committed an act of bankruptcy, may so petition or join in petitioning as aforesaid, whether he shall have had any security in writing for such sum or not. It must, however, be a debt for which, if payable at the time, an action at law could be maintained by and in the name of the petitioning creditor. An equitable debt is not sufficient. Interest, even on a bill of exchange, cannot be the subject of a petitioning creditor's debt, unless expressed to be payable on the face of the instrument; for, otherwise, it is merely damages to be recovered in an action, and not a debt in law. The personal attendance of the petitioning creditor, and of the witness or witnesses to prove the trading and act of bankruptcy, upon the opening of the fiat, shall in no case be dispensed with, except upon special cause, proved to the satisfaction of the commissioner.

PETITIO PRINCIPII, the taking a thing for true or for granted, and drawing conclusions from it as such, when it is really dubious, perhaps false, or at least wants to be proved, before any inferences ought to be drawn from it. *Logic Phrase*.

PETTIFOGGER [*petit*, Fr., little, and *vogueur*, a rower], a small-rate lawyer.

PETIT JURY, a jury in criminal cases who try the bills found by the grand jury.

PETIT LARCENY, stealing of goods to the value of a shilling or under. The distinction between grand and petit larceny is abolished by 7 & 8 Geo. IV., c. 29, § 2.

PETIT SERJEANTY, holding lands of the Crown by the service of rendering annually some small implement of war, as a bow, a sword, a lance, an arrow, or the like. See **TENURE**.

PETIT TREASON, treason of a lesser kind, as if a servant killed his master, a wife her husband, a secular or religious man his prelate. But by the 9 Geo. IV., c. 31, § 2, every offence which, before the passing of the act, would have amounted to petit treason, shall be deemed murder only.

PETRA, a stone weight. *Cowell*.

PETTY BAG OFFICE, an office belonging to the common law jurisdiction of the Court of Chancery, for suits for and against solicitors and officers of that court, and for process and proceedings by extents on statutes, recognizances, *ad quod damnum*, *scire facias*, to repeal letters patent, &c. *Termes de Ley*.

PETTY CONSTABLES, inferior officers in every town and parish, subordinate to the high constable of the hundred. See **CONSTABLE**.

PETTY SESSIONS, sittings of one or two justices of the peace, who are empowered by statute to try in a summary way, and without jury, such minor offences as in the statutes particularized.

PEW [*puye*, Dut., *appui*, Fr.], a seat enclosed in a church. It is somewhat in the nature of a heir-loom, and may descend by imme-

morial custom, without any ecclesiastical concurrence, from the ancestor to the heir.

The right to sit in a particular pew in the church, arises either from prescription as appointment to a messuage, or from a faculty or grant from the ordinary, for he has the disposition of all pews which are not claimed by prescription. All other pews and seats in the body of a church are the property of the parish; and the churchwardens, as the officers of the ordinary, and subject to his control, have authority to place the parishioners therein. 3 *Hagg. Ec. Rep.* 733; 1 *Phil. Rep.* 324.

PHAROS, a watch-tower or sea-mark, which cannot be erected without lawful warrant and authority. 3 *Inst.* 204.

PHATUK, a gaol or prison. *Indian word.*

PHYLASIST [*φυλάσσω*, Gr., to keep], a jailor.

PHYSICIAN, one who professes the art of healing.

The necessity of placing under supervision the practitioners of physic and surgery, appears from our statute book to have been early acknowledged, for we find in the 3rd year of Henry VIII., a statute, entitled, "An Act for the appointing of Physicians and Surgeons," in which, after reciting the inconveniences, and grievous hurt, damage, and destruction of many of the King's liege people, forasmuch as common artificers, as smiths, weavers, and women, boldly take upon them great cures, in which they partly use sorcery and witchcraft, it is enacted, that no person within London or seven miles thereof, shall practice as a physician or surgeon without examination and licence of the Bishop of London or Dean of St. Paul's (duly assisted by the faculty); or beyond these limits, without licence from the bishop of the diocese or his vicar-general, similarly assisted. There is a saving, however, of the privileges of the universities of Cambridge and Oxford. The superintendence of the bishops was taken away by a royal charter, dated 23rd Sept., 10 Hen. VIII., which incorporated the physicians.

By 14 & 15 Hen. VIII., c. 5, this charter was confirmed, and in virtue of such act and charter, a perpetual college of physicians was established, with a constitution of eight elects, to be renewed as need should require, of whom was to be annually elected a president; and it was ordained that this college should choose four physicians quarterly, to supervise all others within London and seven miles thereof, as also their medicines and receipts, so that such as offended should be punished with fines, imprisonment, and other means, and that no person shall be at liberty to practice within that circle, except by the licence of the college, under a penalty of 5*l.* per month. All persons were likewise forbidden to practice even beyond that circle, unless they should have been first examined and approved by the president and three elects, or should be graduates of Cambridge or Oxford. They were also allowed to

practice surgery as part of the general science of physic by 32 Hen. VIII., c. 40.

The charter of the college was subsequently confirmed and enlarged by 1 Mar., sess. 2, c. 9, and by certain other charters of later dates, viz., 8 Oct., 15 Jac. 1, and 26 Mar., 15 Car. 2, by which many important privileges and immunities are further secured to that body.

A physician cannot maintain an action for his fees. 4 *T. R.* 317; 3 *Step. Com.* 325.

PIACLE, an enormous crime. *Obsolete.*

PICARON [*picare*, Ital.], a robber; a plunderer.

PICCAGE [*picagium*, low Lat.], money paid at fairs for breaking ground for booths.

PICK-LOCK, an instrument by which locks are opened without a key.

PICK-POCKET, or **PICK-PURSE**, a thief who steals by putting his hand privately into the pocket or purse of another.

PICKERY, petty theft, or stealing things of small value. *Scotch word.*

PICKLE, **PYCLE**, or **PIGHTEL** [*piccolo*, Ital.], a small parcel of land enclosed with a hedge, which in some counties is called a pingle. *Encyc. Lond.*

PIEDPOUDRE, *court of* [so called, either from the dusty feet of the suitors, or because justice is there done as speedily as dust can fall from the foot, or derived from *pied poudrenux*, old Fr., a pedlar or petty chapman, such as resorts to fairs or markets], a court of record incident to every fair and market, though fallen into disuse, and now in a manner forgotten; of which the steward of him who owns, or has the toll of the market, is the Judge: its jurisdiction extends to administer justice for all commercial injuries done in that very fair or market, and not in any preceding one; so that the injury must be done, complained of, heard and determined, within the compass of one and the same day, unless the fair continue longer. The court has cognizance of all matters of contract that can possibly arise within the precinct of that fair or market, and the plaintiff must make oath that the cause of action arose there. A writ of error lies in the nature of an appeal to the courts at Westminster.

PIERAGE, the duty for maintaining piers and harbours.

PIETANTIA, a pittance, a portion of victuals distributed to the members of a college. *Encyc. Lond.*

PIETANTIARIUS, the officer in a college who was to distribute the *pietantia*.

PIGHTEL, a little enclosure.

PIGNORATION [*pignus*, Lat.], the act of pledging.

PIGNORATIVE, pledging; pawning.

PIGNUS, a pledge or security for a debt or demand, is derived, says Gaius (*Dig.* 50, tit. 16, § 238), from *pignus*, "*quia quæ pignori dantur, manu traduntur.*" This is one of several instances of the failure of the Roman jurists when they attempted etymological explanation of words. The element

of *pignus* (*pig*) is contained in the word *pa(n)go* and its cognate forms. It is called *pignus* when the possession of the thing is given to him to whom it is made a security, and *hypotheca*, when it is made a security, without being put in his possession.

PIGOTT'S ACT, 14 Geo. II., c. 20, relating to recoveries which are now abolished.

PILA, that side of money which was called *pile*, because it was the side on which there was an impression of a church built on piles. *Fleta*, l. 1, c. 39.

PILETTUS [*pila*, Lat., a ball]. In our ancient forest laws, an arrow which had a round knob a little above the head, to hinder it from going far into the mark.

PILENS SUPPORTATIONIS (a cap of maintenance). *Cowell*.

PILFERER, one who steals petty things.

PILLERY, rapine; robbery. *Obsolete*.

PILLORY [the etymology of this word has been variously assigned by different writers; Spelman derives it from the French, *pilleur*, a thief; Cowell from *πύλη*, a door, and *δύω*, I look through; Du Cange, from *pila*, a pillar], a frame erected on a pillar, and made with holes and movable boards, through which the heads and hands of criminals were put.

Until recently, the punishment of the pillory, which had been abolished in all other cases, by 56 Geo. III., c. 138, was retained for the punishment of perjury and subornation; but it is now altogether abolished by 7 Wm. IV., and 1 Vict., c. 23.

PILOT, a particular officer serving on board a ship during the course of a voyage, and having the charge of the helm and the ship's route; or a person taken on board at any particular place for the purpose of conducting a ship through a river, road, or channel, or from or into a port. It is to the latter description of persons that the term pilot is now usually applied, and pilots of this sort are established in various parts of the country, by ancient charters of incorporation or by particular statutes. The most important of these incorporations are those of the Trinity House, Deptford, Stroud, the fellowship of the Pilots of Dover, Deal, and the Isle of Thanet, commonly called the Cinque Port Pilots, and the Trinity Houses of Hull and Newcastle. The 5 Geo. IV., c. 73, established a corporation for the regulation and licensing of pilots in Liverpool. The statute of 6 Geo. IV., c. 125, has consolidated the laws with respect to the licensing, employment, &c., of pilots.

PIMP-TENURE, a very singular kind of tenure mentioned by our old writers, "*Wilhelmus Hoppeshort tenet dimidiam virgatam terræ, per servitium custodiendi sex damisellas, scilicet meretrices, ad usum domini regis.*" 12 Ed. I.

PIN-MONEY, an annual sum settled on a wife to defray her own charges, in dress and pocket money.

Courts of equity refuse to call upon a husband to pay beyond the arrears of a

year, although stipulated for by a marriage settlement, for the money is meant to dress the wife during the year, so as to keep up the dignity of the husband, and not for the accumulation of the fund. The personal representatives of the wife are not allowed to make any claim for the arrears of pin-money, not even for arrears of a year. If, however, the wife live separate, and have no allowance, an account of the arrears of pin-money will be decreed. *Aston v. Aston*, 1 Ves. 269; *Spect.* no. 295.

There is a very ancient tax in France for providing the Queen with pins.

PINNAGE [from *to pin* or *pen*], poundage of cattle.

PIPE, a roll in the Exchequer; otherwise called the *Great Roll*.

PIRACY, committing those acts of robbery and violence upon the sea, that if committed upon land, would amount to felony. Pirates hold no commission or delegated authority from any sovereign or state empowering them to attack others. They can, therefore, be only regarded in the light of robbers or assassins. They are, as Cicero has truly stated, the common enemies of all (*communes hostes omnium*); and the law of nations gives to every one the right to pursue and exterminate them without any previous declaration of war; but it is not allowed to kill them without trial, except in battle. Those who surrender or are taken prisoners must be brought before the proper magistrates, and dealt with according to law. By the ancient common law of England, piracy, if committed by a subject, was held to be a species of treason, being contrary to his natural allegiance; and by an alien, to be felony only; but since the statute of treason, 25 Edw. III., c. 2, it is held to be only felony in a subject. Formerly, this offence was only cognisable by the admiralty courts, which proceed by the rules of the civil law, but it being inconsistent with the liberties of the nation that any man's life should be taken away, unless by the judgment of his peers, the statute 28 Hen. VIII., c. 15, established a new jurisdiction for this purpose, which proceeds according to the course of common law. Piracy was almost universally practised in the heroic ages. Instead of being esteemed infamous it was supposed to be honourable. *Latrocinium maris gloriæ habebatur*. *Justin*, lib. x., l. iii., c. 3. Menelaus, in the *Odyssey*, does not hesitate to inform his guests, who admired his riches, that they were the fruit of his piratical expeditions, lib. iv., v. 90; and such indeed was the way in which most of the Greek princes amassed great wealth. *Goguet*, *Origin of Laws*, v. i., p. 383. *Eng. Laws*.

PIRACY OF WORKS, literary theft.

The remedies for piracy is an action at law for damages, or a special injunction. See **INJUNCTION**.

Pirata est hostis humani generis. 3 Inst. 113.
— (A pirate is an enemy of the human race.)

PISCARY, common of, a right or liberty of fishing in the waters of another person. See **COMMON**.

PIT, a hole wherein the Scots used to drown women thieves. *Skene*.

PITCHING-PENCE, money; commonly a penny, paid for pitching or setting down every bag of corn or pack of goods in a fair or market.

PITTANCE, a little repast or refection of fish or flesh more than the common allowance; and the pittance was the officer who distributed this at certain appointed festivals.

PIXING THE COIN, ascertaining whether coin is of the proper standard. The trial of the pix takes place before a jury of members of the Goldsmiths' Company.

PLACARD or **PLACART** [*plakaert*, Dut., *placard*, Fr., from *plaque*, a flat piece of metal, stone, or wood; *πλατ*, Gk.], an edict, a declaration, a manifesto; also an advertisement or public notification.

PLACEMAN, one who exercises a public employment, or fills a public station.

PLACES OF AMUSEMENT. It is provided by 25 Geo. II., c. 36, § 2, that every house, room, garden, or other place, kept for public dancing, music, or other public entertainment of the like kind in London and Westminster, or within twenty miles thereof, without a license from the quarter sessions, shall be deemed a disorderly house, and the keeper thereof shall forfeit the sum of 100*l.*, and be otherwise punishable as the law directs in the case of disorderly houses. And it is further enacted, that over the door or entrance of all such licensed places there shall be affixed and kept up the words, "Licensed, pursuant to Act of Parliament of the twenty-fifth of Geo. II.," and that no house of this description is to be opened for the purpose of amusement before five o'clock in the afternoon.

But this act has no application to the Theatres Royal, or Drury Lane and Covent Garden, or the Italian Opera in the Haymarket; nor to theatres licensed by the Crown or the Lord Chamberlain of the Household.

PLACIT or **PLACITUM**, decree, determination.

PLACITA, the public assemblies of all degrees of men where the Sovereign presided, who usually consulted upon the great affairs of the kingdom. Also, pleas, pleadings, or debates, and trials at law; sometimes penalties, fines, mulcts, or emendations; also, the style of the court at the beginning of the record at *nisi prius*; but this is now omitted. *Cowell*.

Placita concernentia chartas, seu scripta liberum tenementum tangentia, in aliquibus curiis, quæ recordum non habent secundum legem et consuetudinem regni Angliæ, sine brevi regis placitari non debent. 2 Inst. 311.—(Pleas relating to charters or writings touching freehold ought not to be pleaded in courts not of record, by the law and

custom of England, without the king's writ.)

*Placita de catallis, debitis, &c., quæ summam 40*l.* attingunt, vel eam excedunt secundum legem et consuetudinem Angliæ sine brevi regis placitari non debent.* 2 Inst. 312.—(Pleas of chattels, debts, &c., which amount to 40*l.*, or exceed it, by the law and custom of England, ought not to be pleaded without the king's writ.)

Placita de transgressione contra pacem regis, in regno Angliæ vi et armis facta secundum legem et consuetudinem Angliæ sine brevi regis placitari non debent. 2 Inst. 311.—(Pleas of trespass against the peace of the king in the kingdom of England, made with force and arms, ought not, by the law and custom of England, to be pleaded without the king's writ.)

PLACITARE, to plead.

PLACITATOR, a pleader.

PLACITUM NOMINATUM, the day appointed for a criminal to appear and plead and make his defence. *Leg. H. 1, c. 29.* *Placitum pactum*, when the day is past.

Placitum aliud personale, aliud reale, aliud mixtum. Co. Lit. 284.—(Pleas are personal, real, and mixed.)

PLAGIARII, those who steal human creatures.

PLAGIARY [*πλαγας*, Gk., a blow], a man-stealer; a thief in literature, one who steals the thoughts or writings of another.

PLAGII CRIMEN or **PLAGIUM**, the stealing of human creatures.

PLAGUE [*πληγη*, Gk., a wound], pestilence; a contagious and malignant fever, mostly accompanied by buboes and carbuncles.

By 1 Jac. I., c. 31, if any person infected with the plague, or dwelling in any infected house, should be commanded by the mayor or constable, or other head officer of his town or place, to keep his house, and should wilfully and contemptuously disobey such direction, he should be enforced with violence, by the watchman appointed to obey such necessary command; and if any hurt ensued by such enforcement, the watchmen were not to be impeached. And farther, if such person so commanded to confine himself went abroad and conversed in company, if he had any infectious sore upon him, uncured, should suffer death as a felon; but if no such sore should be found upon him, should be punished as a vagabond, and moreover bound to his good behaviour. This act was abolished, however, by 7 Wm. IV. and 1 Vict., c. 91, § 4. See **QUARANTINE**.

PLAIDEUR, an attorney who pleaded the cause of his client; an advocate. *Obsolete*.

PLAINANT, a plaintiff.

PLAINT [*plainte*, Fr., *querela*, Lat.], the exhibition of an action in writing. It is the first process in an inferior court, in the nature of an original writ, because therein is briefly set forth the plaintiff's cause of action; and the Judge is bound, of common right, to administer justice therein without a special mandate from the Crown.

PLAINTIFF [*plaintif*, Fr.], he that commences a suit in law against another, who is called a defendant.

PLANTATION, a colony.

With respect to their internal policy, our colonies are of three sorts; 1, provincial establishments; 2, proprietary governments; 3, charter governments. 1 *Bl. Com.* 108.

PLAY-DEBT, debt contracted by gaming.

PLEA [*plée*, Fr.], a defendant's answer of fact to a plaintiff's declaration; anciently a suit or action.

Pleas are divided into *common pleas*, relating to civil causes, and *pleas of the Crown*, relating to criminal prosecutions.

At *common law* pleas are divided into—

1. Dilatory; which are subdivided into—

(a) To the jurisdiction of the court.

(b) In suspension of the action.

(c) In abatement of the writ or declaration, and—

2. Peremptory, *i. e.*, in bar of the action.

The distinction between these two classes of *pleas* is, that the dilatory show some ground for quashing the declaration, the peremptory, for defeating the action.

The invariable order of pleading is as follows:—

1. To the jurisdiction of the court.

2. To the disability of the person.

(a) Of plaintiff.

(b) Of defendant.

3. To the count or declaration.

4. To the writ.

5. To the action itself in bar thereof.

In *equity*, a plea is resorted to by a defendant when an objection is not apparent on the bill itself, or, as the technical phrase is, where it arises from matter *dehors* the bill, if the defendant means to take advantage of it, he ought to show the matter which creates the objection to the court, either by plea or by answer. A plea is a special answer, showing or relying upon one or more things, as a cause why the suit should either be dismissed, delayed, or barred. Pleas are divided into two sorts: 1, pure pleas, which rely wholly on matter *dehors* the bill, such as a release or settled account; and, 2, anomalous or negative pleas, which consist mainly of denials of the substantial matters set forth in the bill.

(1) To original bills praying relief, the appropriate defences by pleas may be thus divided:

(a) To the jurisdiction.

(b) To the person.

(c) To the frame or form of the bill.

(d) In bar to the bill.

(a) Pleas to the jurisdiction are either—

1. That the subject of the bill is not within the cognizance of any municipal court of justice.

2. That it is not within the jurisdiction of a court of equity.

3. That some other court of equity is invested with the proper jurisdiction.

4. That some other court possesses the proper jurisdiction.

(b) Pleas to the person are either

(1) To the person of the plaintiff, as

(a) Outlawry.

(β) Excommunication.

(γ) Popish recusant convict.

(δ) Attainder.

(ε) Alienage.

(ζ) Infancy.

(η) Coverture.

(θ) Idiocy or lunacy.

(ι) Bankruptcy or insolvency.

(κ) Want of character, in which the plaintiff sues.

(2) To the person of the defendant, as that he does not possess the character in which he is sued.

(c) Pleas to the bill are either

(1) The pendency of another suit.

(2) Proper parties.

(3) Multiplicity.

(4) Multifariousness.

(d) Pleas in bar are either

(A) Founded on some bar created by statute, as

(a) A statute of limitations.

(β) The Statute of Frauds.

(γ) Any other public or private statute.

(δ) The plea of a statute, fine, and non-claim.

(B) Founded on matter of record, or as of record in some court, as

(a) A common recovery

(β) Judgment at law in a court } of record.

(γ) The sentence or judgment of a foreign court (which is deemed to be a court not of record) upon the same matter put in controversy by the bill } as of record.

(δ) A decree in a court of equity

(C) Of matter purely *in pais*, *i. e.*, upon matter of fact, not of record, as

(a) Release.

(β) Stated account.

(γ) Settled account.

(δ) Award.

(ε) Purchase for valuable consideration.

(ζ) Title in the defendant, generally founded on a will, conveyance, or long peaceable and adverse possession.

(2) To bills of discovery, the most usual pleas are,

(a) That the discovery may subject the defendant to pains or penalties, or a criminal prosecution.

(b) That it will subject him to a forfeiture, or something in the nature of a forfeiture.

(c) That it will betray the confidence reposed in him as counsel, attorney, solicitor, or arbitrator.

(d) That he is a purchaser for a valuable consideration, without notice of the plaintiff's title.

(3) To bills not original, as

(a) To supplemental bills and bills in the nature of supplemental bills, a plea must be resorted to, when the objection is not on the face of the bill.

(b) To bills of revivor, or in the nature of bills of revivor, a defendant can only object by plea or demurrer; he may plead the want of proper parties or a statute of limitations.

(c) To cross bills, the same pleas are applicable as to original bills.

(d) To bills of review, and bills in the nature of bills of review, a plea of the decree may be resorted to. And where any matter beyond the decree, as length of time, a purchase for a valuable consideration, or any other matter, is to be offered against opening the enrolment, it must be pleaded.

(e) The proper defence to a bill, seeking to impeach a decree on the ground of fraud, is a plea of the decree, denying the fraud, supported by an answer also, meeting the charges of fraud.

(f) To bills to carry decrees into execution, the defendant may plead no right or interest, if the matter be not apparent on the bill, so as to admit of a demurrer. *Story's Eq. Plead.* 492.

A defendant has six weeks after appearance to plead to any original, supplemental, or amended bill, if it be amended before answer, and eight days after appearance to plead to a bill of revivor, or a common injunction bill, and four weeks after appearance to subpoena, to answer, &c., amended bill, after he has answered, &c. *16th Order, 8th May, 1845.* A plea is signed by counsel in town cases, but not in country, when taken by commission; and pleas in bar of matters *in pais* must be sworn to unless plaintiff consent otherwise. If a plaintiff consider the plea not true in point of fact, he may file a replication to it which denies its facts, but admits its validity in point of form and substance. If the plaintiff consider the plea good, he may submit to it, and obtain an order as of course to amend his bill. Within three weeks after the filing of a plea to the whole or part of a bill, the plaintiff, desiring to submit such plea to the judgment of the court, is to cause the same to be set down for argument. If he do not, such plea is to be held good to the same extent and for the same purposes as a plea allowed upon argument, and the plaintiff is to be held to have submitted thereto. No plea is to be held bad and overruled upon argument only, because it shall not cover so much of the bill as it might by law have extended to, or only because the answer of the defendant may extend to some part of the same matter as may be covered by such plea. *36th & 37th Orders, 26th August, 1841.* A defendant may move the court that a bill may be dismissed, if a plaintiff, having undertaken to reply to a plea to the whole bill, do not file his replication within four weeks after the date of his undertaking: as to the costs, see *Orders, 8th May, 1845, 48, &c.*

The defendant's pleas in *ecclesiastical* causes are called allegations.

The order of a prisoner's pleas in *criminal* law is as follows:—

(1) To the jurisdiction.

(2) In abatement.

(3) Special pleas in bar, as

(a) *Auterfois acquit.*

(b) *Auterfois convict.*

(c) *Auterfois attain.*

(d) Pardon.

(4) General issue of not guilty.

PLEAD, making an allegation in a cause; also, the forensic argument in a cause.

PLEADABLE BRIEFS, precepts directed to the sheriffs, who thereupon cite parties, and hear and determine. *Scotch phrase.*

PLEADER [*narrator*], one who draws pleadings.

PLEADING, in its general sense, the proceedings from the declaration to issue joined, *i.e.*, the contending statements of the parties; in its specific sense, a defendant's answer to a plaintiff's declaration.

The science of pleading was no doubt derived from Normandy. The use of stated forms of pleading is not to be traced among the Anglo-Saxons. Pleading was cultivated as a science in the reign of Edward I. The object of pleading is to ascertain by the production of an issue, the subject for decision.

I. The rules which tend simply to the production of an issue, are

(a) That after declaration, the parties must at each stage demur, or plead, either by way of traverse, or by way of confession and avoidance; and as to the nature and property of pleadings in general, without reference to their being by traverse or by confession and avoidance, the properties are,

(a) That every pleading must be an answer to the whole of what is adversely alleged.

(B) That every pleading is taken to confess such traversable matters alleged on the other side as it does not traverse, but dilatory pleas and pleas by estoppel are exceptions, as also a new assignment.

(b) That upon a traverse issue must be tendered.

(c) That an issue well tendered must be accepted.

II. The rule which tends to secure the materiality of the issue, is,

(a) That all pleadings must contain matter pertinent and material; for a traverse must not be taken of an immaterial point, and a traverse must be neither too large nor too narrow.

III. The rules which tend to produce singleness or unity in the issue, are

(a) That pleadings must not be double.

(b) That it is not allowable both to plead and to demur to the same matter.

IV. The rules which tend to produce certainty or particularity in the issue, are

(a) That the pleadings must have certainty of place.

(b) That the pleadings must have certainty of time.

(c) That the pleadings must specify quality, quantity, and value.

(d) That the pleadings must specify the names of persons, whether parties to the suit, or parties of whom mention is made in the pleading.

(e) That the pleading must show title.

(f) That the pleadings must show authority.

(g) That in general whatever is alleged in pleading must be alleged with certainty.

The rules which tend to certainty are limited and restricted by the following subordinate rules:—

(a) It is not necessary in pleading to state that which is merely matter of evidence.

(β) It is not necessary to state matter of which the court takes notice *ex officio*.

(γ) It is not necessary to state matter which would come more properly from the other side.

(δ) It is not necessary to allege circumstances necessarily implied.

(ε) It is not necessary to allege what the law will presume.

(ζ) A general mode of pleading is allowed where great prolixity is thereby avoided.

(η) A general mode of pleading is often sufficient, where the allegation on the other side must reduce the matter to certainty.

(θ) No greater particularity is required than the nature of the thing pleaded will conveniently admit.

(ι) Less particularity is required when the facts lie more in the knowledge of the opposite party than of the party pleading.

(κ) Less particularity is necessary in the statement of matters of inducement or aggravation than in the main allegations.

(λ) With respect to acts valid at common law, but regulated as to the mode of performance by statute, it is sufficient to use such certainty of allegation as was sufficient before the statute.

(V.) The rules which tend to prevent obscurity and confusion in pleading are,

(a) That the pleadings must not be insensible or repugnant.

(b) That the pleadings must not be ambiguous or doubtful in meaning; and when two different meanings present themselves, that construction shall be adopted which is most unfavourable to the party pleading.

(c) That the pleadings must not be argumentative.

(d) That the pleadings must not be hypothetical or in the alternative.

(e) That the pleadings must not be by way of recital, but must be positive in their form.

(f) That things are to be pleaded according to their legal effect or operation.

(g) That the pleading should observe the ancient and known forms of expression as contained in approved precedents.

(h) That the pleadings should have their proper formal commencements and conclusions.

(i) That a pleading which is bad in part is bad altogether.

VI. The rules which tend to prevent prolixity and delay in pleading are,

(a) That there must be no departure in pleading.

(b) That where a plea amounts to the general issue it should be so pleaded.

(c) That surplusage is to be avoided.

VII. The other miscellaneous rules are,

(a) That the declaration must be conformable to the writ.

(b) That the declaration shall have its proper commencement, and should in conclusion lay damages and allege production of suit.

(c) That pleas must be pleaded in due order. See PLEA.

(d) That pleas in abatement must give the plaintiff a better writ or declaration.

(e) That dilatory pleas must be pleaded at a preliminary stage of the suit.

(f) That all affirmative pleadings which do not conclude to the country must conclude with a verification.

(g) That in all pleadings where a deed is alleged, under which the party claims or justifies, proof of such deed must be made.

(h) That all pleadings must be properly entitled.

(i) That all pleadings ought to be true. *Step. Plead.* 148—490.

The order of the pleadings at *common law* in all actions (except replevin) is as follows:

1. Declaration.

2. Plea.

3. Replication.

4. Rejoinder.

5. Surrejoinder.

6. Rebutter.

7. Surrebutter; after which the pleadings have no distinctive names, for beyond this stage they are very seldom found to extend.

The pleadings numbered 1, 3, 5, 7, emanate from the plaintiff, the remainder from the defendant. See DEMURRER and NEW ASSIGNMENT.

The pleadings in replevin are as follow:

1. Plaint or declaration.

2. Avowry, cognizance, or plea of *non caput*.

3. Plea in bar.

4. Replication, &c., the ordinary name of each pleading being postponed by one step. See REPLEVIN.

The pleadings in *equity* are thus arranged:

1. Bill or information.

2. Answer, plea, demurrer, or disclaimer.

3. Replication.

The pleadings in *criminal law* are,

1. Indictment or information.

2. Plea or demurrer.

3. *Similiter* or joinder.

The pleadings in *ecclesiastical causes* are,

I. In criminal causes,

(a) The articles.

II. In plenary causes, not criminal,

(a) The libel.

III. In testamentary causes,

(a) The allegation.

Every subsequent plea in all causes, and by whatever party given, is termed,

(b) An allegation.

PLEAS OF THE CROWN, the criminal law department of our jurisprudence; so called, because the sovereign, in whom centers the majesty of the whole community, is supposed by the law to be the person injured by every wrong done to that community, and is, therefore, in all cases the proper prosecutor for every such offence.

PLEBANIA, a mother church. *Old Record.*

PLEBANUS, a rural dean.

PLEBEITY or **PLEBITY**, the common or meaner sort of people.

PLEBISCITE or **PLEBISCITUM**, among the Romans, a law enacted by the common people, at the request of the tribune or some other plebeian magistrate, without the intervention of the senate; more particularly applied to the law which the people made, when, upon some misunderstanding with the senate they retired to the Aventine mount.

PLEDGE, anything put to pawn or given by way of warrant or security; also a surety, bail, or hostage. See **PAWN**.

There are two kinds of estates held in pledge, *visgage* and *mortgage*.

PLEDGER, one who offers a pledge.

PLEDGERY, suretyship, or an undertaking or answering for another.

PLEGIIS ACQUIETANDIS, a writ that anciently lay for a surety against him for whom he was surety, if he paid not the money at the day. *F. N. B.* 137.

PLEGII DE PROSEQUENDO, pledges to prosecute with effect an action of replevin.

PLEGII DE RETORNO HABENDO, pledges to return the subject of distress, if the right be determined against the party bringing the action of replevin.

PLENA FORISFACTURA, a forfeiture of all that one possesses.

PLENA PROBATIO, testimony by two witnesses. *Civil Law Term.*

Plena et celeris justitia fiat partibus. 4 Inst. 67.—(Let full and speedy justice be done to the parties.)

PLENARTY, said of a benefice when full or possessed by an incumbent, opposed to *vacancy*.

PLENARY, full, complete; an ordinary proceeding through all its gradations; opposed to *summary*.

Plenary causes in the ecclesiastical courts are the following:—

1. All testamentary proceedings and business of administration, unless in the Prerogative Court, where the proceedings are always summary, as by motion or petition.

2. All causes of legacy.

3. Causes of defamation, or reproachful or opprobrious language.

4. Causes of divorce, or separation from bed and board.

5. Jactitation of marriage.

6. Impediments to marriage.

7. Suits for ecclesiastical dilapidations.

8. Suits relating to seats or sitting-places in churches.

9. Suits for tithes.

PLENE ADMINISTRAVIT (he has fully administered). If an executor or administrator plead that he has fully administered all the assets that has come to his hands, the plaintiff, if he cannot dispute the plea, and there are other assets to be received, would sign judgment of assets *quando acciderint*, and then, when assets afterwards come to the executor's hands, the plaintiff should sue out a *scire facias* against the executor, and proceed to realise the judgment.

PLENE ADMINISTRAVIT PRÆTER, (he has fully administered except). When an executor or administrator pleads that he has fully administered the assets that have come to his hands, except, &c., the plaintiff, if he cannot dispute the plea, should sign judgment presently of the assets acknowledged to be in the defendant's hands, and of assets *in futuro* for the residue.

PLENIPOTENTIARY, a person who has full power and commission to do anything.

PLENUM DOMINIUM, a title combining the right and the corporal possession of property, which possession could not be acquired without both an actual intention to possess, and an actual seisin or entry into the premises, or part of them, in the name of the whole. *Roman Law Phrase.*

PLEVIN [*plevina*, low Lat.], a warrant or assurance.

PLIGHT, an estate, with the habit and quality of the land; it extends to a rent-charge and to a possibility of dower. *Co. Lit.* 221, b.

PLOK-PENIN, a kind of earnest used in public sales at Amsterdam.

PLOUGH-ALMS [*eleemosyna aratrales*], the ancient payment of a penny to the church from every plough land.

PLOUGH-BOTE, a tenant's right to take wood for the repairs of ploughs, carts, and harrows, and for making rakes, forks, &c.

PLOUGH-LAND, a hide of land, a carucate.

PLOUGH-SILVER, money formerly paid by some tenants, in lieu of service to plough the lord's lands.

PLOUGH MONDAY, the Monday after Twelfth Day.

PLURALIST, one that holds more ecclesiastical benefices than one, with cure of souls.

Pluralis numerus est duobus contentus. 1 Rol. Rep. 476.—(The plural number is contained in two.)

PLURALITY, two or more benefices.

By 1 & 2 Vict., c. 106, (repealing the former statute against pluralities, 21 Hen. VIII., c. 13), it is enacted, that in future (and subject to exception in the case of rights already vested), no spiritual person holding any benefice, with cure of souls, shall take to hold therewith any other benefice, with cure of souls, unless situated within ten statute miles of the first; that no spiritual person holding a benefice, with cure of souls, with a population of more than 3000, shall take to hold therewith any other, having a population of more than 500, or vice

versd, that no spiritual person shall hold together any two benefices, with the cure of souls, of the joint value of more than 1000*l. per annum*; that no spiritual person holding more than one benefice, with cure of souls, shall take to hold therewith any other or any cathedral preferment; and that upon every admission to a new benefice or preferment contrary to the act, every benefice previously held shall be void *ipso facto*: which prohibition, however, in respect of population and yearly value, are subject to a provision enabling the Archbishop of Canterbury to grant a dispensation therefrom in certain cases, on recommendation of the bishop of the diocese. And see 4 & 5 Vict., c. 39.

Pluralitas idem sententium semper superat, quia facilius invenitur quod a pluribus quæritur.

—(The multitude of persons thinking the same always avails, because that which is sought by many is more easily found out.)

Plures cohæredes sunt quasi unum corpus, propter unitatem juris quod habent. Co. lit. 163.—

(Several coheirs are, as it were, one body, by reason of the unity of right which they possess.)

Plures participes sunt quasi unum corpus, in eo quod unum jus habent. Co. lit. 164.—

(Several partners are as one body, in that they have one right.)

PLURIES (as often), a writ that issues in the third instance after the first and the *alias* have been ineffectual.

Plus exempla quam peccata nocent.—(Examples hurt more than crimes.)

Plus peccat auctor quam actor. 5 Co. 99.—

(The institutor offends more than the performer.)

Plus valet unus oculatus testis quam auriti decem. 4 Inst. 279.—(One eye witness is better than ten ear witnesses.)

Plus valet quod agitur quam quod simulatè concipitur.—(What is done more avails than what is feignedly conceived.)

Plus valet vulgaris consuetudo quam regalis concessio. Co. Cop. § 31.—(Common custom is better than royal grant.)

Plus vident oculi quam oculus. 4 Inst. 160.—

(Eyes see more than an eye.)

POACHER, one who steals game.

POACHING, stealing game.

By 9 Geo. IV., c. 69, § 1, extended by 7 & 8 Vict., c. 29, it is provided, that if any person shall by night unlawfully take or destroy any game or rabbits in any land (whether open or enclosed), or on any public road, highway, or path, or the sides thereof, or at the openings, outlets, or gates from any such lands into such roads, or shall, by night, be in such places with any gun, net, engine, or other instrument, for the purpose of taking or destroying game, he shall be liable to imprisonment, for the first offence, for any period not exceeding three months, with hard labour, and at the expiration of such period to be bound over to his good behaviour by sureties for a year, or in default thereof, to be further impri-

soned for six months, or until such sureties are found. For a second offence he shall be liable to imprisonment for six months, and then to be bound in sureties for two years; and in default thereof, to be further imprisoned for one year, or until such sureties are found. And if such person shall offend a third time, he shall be guilty of a misdemeanour, and be liable to be transported for seven years, or imprisoned, with hard labour, for any time not exceeding two years. It is moreover provided, that when any person shall be found committing such offence, it shall be lawful for the owner or occupier of the land, or for any person having a right of free warren or free chase therein, or for the lord of the manor, or for the gamekeeper or servant of such persons, or their assistants, to seize and apprehend such persons so offending; and in case such offender shall assault or offer any violence with any offensive weapon whatsoever towards such person so authorized to apprehend him, he shall be guilty of a misdemeanour, and be liable to be transported for seven years, or imprisoned with hard labour for any term not exceeding two years.

It is also enacted (§ 9), that if any persons, to the number of three or more, shall by night unlawfully enter such lands or roads, for the purpose of taking or destroying any game or rabbits (any of them being armed with any gun or other offensive weapon), each of such persons shall be guilty of a misdemeanour, and be liable to transportation for any term not more than fourteen years or less than seven years, or imprisonment with hard labour for not more than three years.

POCKET SHERIFF, when the sovereign appoints a person sheriff who is not one of the three nominated in the exchequer, he is called a pocket sheriff. 1 Bl. Com. 342.

Pœnâ ex delicto defuncti, hæres teneri non debet. 2 Inst. 198.—(The heir ought not to be bound in a penalty for the crime of the defunct.)

Pœna gravior, ultra legem posita æstimationem conservat. 4 Inst. 66.—(A heavier punishment, put beyond the law, preserves esteem.)

Pœna non potest, culpa perennis erit.—(Punishment cannot be, crime will be lasting.)

Pœnæ potius molliendæ quam exasperandæ sunt. 3 Inst. 220.—(Punishments should rather be softened than aggravated.)

Pœnæ sint restringendæ. Jenk. Cent. 29.—(Punishments should be restrained.)

POET LAUREAT. See **LAUREAT**.

POINDING, the Scotch term for taking goods, &c., in execution, or by way of distress. It is defined to be "the diligence (process) which the law has devised for transferring the property of the debtor to the creditor in payment of his debt." It is either real or personal; not that any inheritance is conveyed by poinding, but real poinding is a power of carrying off the effects on the ground in payment of such debts as

are *debita fundi*, or heritable; personal pointing is the pointing of movables for debt or for rent, &c. There is also a species of pointing by attaching cattle trespassing. 33 Geo. III., c. 74, § 5.

POISON, a substance which, on being applied in one or other way to the human body, is capable of destroying the action of the vital functions, or of placing the solids and fluids in such a situation that prevents the continuance of life.

The means of ascertaining the traces of poison, either on the living or dead body, is one of the most important subjects in legal medicine, and its importance is only equalled by its difficulty.

Poisons may be introduced into the system in various ways; through the nose in the form of odours; through the lungs by inspiration by the mouth and œsophagus, in the form of food; by the rectum, in the form of injection; through the skin, in some instances, by absorption.

The rapidity of the action of poisons varies considerably. Concentrated hydrocyanic acid destroys an adult man almost in an instant, while others take away life within an hour, a few hours, a day, or a longer period. Some prove fatal after months, or a year.

The administration of poison or other destructive thing, or causing it to be taken, is declared felony. 9 Geo. IV., c. 31, § 11. It is deemed murder, if the party poisoned die within the year; but, in Scotland, a person might be punished, although death took place at a period indefinitely remote, provided the operation of the poison can be distinctly traced as causing it.

Professor Christison considers poisons under the three grand classes of

Irritants,
Narcotics, and
Narcotico-acrids.

1. Signs of poison on the living body.

A person is supposed to be poisoned, if, being in perfect health, he is attacked, after having taken some food or drink, with violent pain, cramp in the stomach, nausea, vomiting, convulsive action, and a sense of suffocation; or if he be seized, under the same circumstances, with vertigo, giddiness, delirium, or unusual drowsiness.

The class of irritant poisons comprehend both those symptoms which have a purely local irritating action, and likewise many which also act remotely, but whose most prominent feature of action still is the inflammation they excite wherever they are applied.

A narcotic poison produces the following effects: stupor, numbness, a great inclination to sleep, coldness, and stiffness of the extremities, a cold sweat of a foetid or greasy nature, swelling of the neck and face, protrusion of the eye, with a haggard cast of countenance, thickening of the tongue, frequent vertigo, weakened eyesight, or objects presented to it in a fantastic manner, coma, delirium, general debility, palpitation of the

heart, the pulse at first full and strong, but afterwards unequal and intermittent, paralysis of the lower extremities, retraction of the lips, general swelling of the body, and dilatation of the anus.

The narcotico-acrid poisons are distinguished by a combination of several of the above symptoms: they are agitation, pain, acute cries, sometimes stupor and convulsive motions of the muscles of the face, jaws, and extremities; vertigo, and occasionally extreme stiffness of the limbs and contraction of the muscles of the thorax; the eyes red and starting from their sockets, the pupils frequently dilated, insensibility to external impressions, mouth full of foam, tongue and gums hard, nausea, vomiting, frequent stools, often these symptoms attack in paroxysms.

It is a very difficult question to determine whether poisoning is the result of suicide or homicide. An opinion can only be formed from moral consideration, and a notice of the following is recommended by Foderé. The previous state of the mind of the deceased—whether he has been subject to delirium, also if he have not met with losses—has been disappointed in his hopes, or is suffering under disgrace. Also, whether any of the persons with whom he lived or associated had any interest in his death. The season of the year also deserves consideration, for suicides are most frequent during the period of the solstices and the equinoxes. It should be ascertained whether the patient, instead of complaining, remains quiet, seeks solitude, and refuses the aid of medical men, &c. Any kind of writing left by the individual to express his last wishes, as it is the most common, so it is also the most certain proof of self-destruction. But finding a part of the poison in the room or in his pockets, is evidently a very equivocal proof, since it may quite as easily be put there by others as by himself.

2. Signs of poisons on the dead body.

The irritant poisons generally produce inflammation of the first passages, and occasionally constrictions of the intestinal canal, perforations or preternatural softness of the interior coats, and sometimes, though rarely, gangrene and sphacelus. The inflammation varies as to extent and intensity.

The effects of narcotic poisons are far from being marked or even peculiar. Dr. Christison observes, that the morbid appearances left by them on the dead body are commonly insignificant. Sometimes, however, the veins of the brain are much gorged with blood, and the ventricles and membranes contain serosity. The blood appears to be sometimes altered in its nature, but these changes are by no means invariable, and are sometimes not remarked at all.

Some of the narcotico-acrid poisons are capable of exciting severe inflammation, accompanied occasionally with ulceration, whilst others do not inflame. The lungs, blood, brain, and other organs, present,

in general, the same alterations as are induced by the narcotics.

A poisonous substance is sometimes introduced after death, with a view of accusing an innocent person of the crime. Orfila ascertained that when poisons were introduced into the alimentary canal twenty-four hours after death, they did not excite redness or inflammation, because life is entirely destroyed in the capillary vessels. It is only when they are employed an hour or two after death that the inflammatory phenomena, accompanied with the line of demarcation, are capable of occurring.

I. Irritant poisons have been divided by Dr. Beck into seven orders or groups:—

(a) The acids and their bases, as sulphuric acid, nitric acid, muriatic acid, acetic acid, oxalic acid, phosphorus, iodine, hydriodate of potash, bromine, hydrobromate of potash.

(b) The alkalies and their salts, as potash, sub-carbonate of potash, nitrate of potash, soda, ammonia, muriate of ammonia, quicklime, oxymuriate of lime, chloride of soda, liver of sulphur, sulphuret of soda.

Dr. Fartra arranges the cases of poisoning by nitric acid into four classes:—1st, when the death is speedy, for it is never sudden; it commonly takes place from the primary effects in about twenty-four hours, varying from six to forty-eight hours; 2nd, when it proves fatal from its secondary effects, at various distances of time, from fifteen days to some years; 3d, when death does not take place, but the recovery is imperfect; 4th, when a perfect cure is sooner or later obtained.

(γ) The metallic compounds, as arsenic, mercury, the most important compound of which, in its relation to legal medicine, is corrosive sublimate, antimony, copper, zinc, tin, silver, gold, platina, bismuth, iron, lead, chrome, barytes, and its salts.

(δ) The vegetable acids or irritants, of which the following is a botanical arrangement:—

Cucurbitaceæ. — Bryonia. Momordica, Cucumis.

Euphorbiaceæ. — Euphorbia, Ricinus, Jatropha, Hippomane, Croton.

Ranunculaceæ. — Ranunculus, Anemone, Caltha, Delphinium, Clematis.

Papaveraceæ. — Chelidonium.

Thymelææ. — Daphne.

Convolvulaceæ. — Convolvulus.

Amaryllidææ. — Narcissus.

Scrophularinææ. — Pedicularis, Gratiola.

Guttiferææ. — Stalagmites.

Coniferææ. — Juniperus.

Anacardiaceææ. — Rhus.

Ficoideææ. — Sedum.

Ericææ. — Rhododendron.

Primulaceææ. — Cyclamen.

Plumbaginææ. — Plumbago.

Lobeliaceææ. — Lobelia.

Umbelliferææ. — Pastinaca, Hydrocotyle.

Phytolacceææ. — Phytolacca.

Aroideææ. — Calla, Arum.

Caprifoliaceææ. — Sambucus.

(e) Animal irritants, as cantharides, lytta vittata. *Poisonous serpents*, as the viper, rattlesnake, scorpion, tarantula, spider, bee, wasp, hornet. *Poisonous fishes*, as the muscle, oyster, crab, lobster, mackarel, at certain seasons of the year; and several in the Indies.

(f) Mechanical irritants, as glass and enamel in powder.

(η) Irritant gases, as chlorine, nitrous acid vapour, muriatic acid gas, sulphurous acid gas, seleniuretted hydrogen gas.

II. Narcotic poisons, defined by Orfila to be those which produce stupor, drowsiness, paralysis or apoplexy, and convulsions. "The term *narcotism*," says Dr. Christison, "has been used by different writers with different significations, but is now generally understood to denote the effects of such poisons as bring on a state of the system like that caused by apoplexy, epilepsy, or other disorders commonly called nervous. Narcotic poisons, therefore, are such as produce chiefly or solely symptoms of a disorder of the nervous system." Under this division the following substances are commonly arranged:—

VEGETABLE NARCOTICS.

Papaveraceææ. — Passaver, Morphine, Narcotine.

Solanæææ. — Hyoscyamus, Solanum, Physalis.

Compositæææ. — Lactura.

Coniferæææ. — Taxus.

Smiluceæææ. — Paris.

Ranunculaceæææ. — Actæa.

Rutaceæææ. — Peganum.

Ericææææ. — Azalea.

Amygdaleæææ. — Prunus and Cerasus, Amygdalus and Persica.

Pomaceææææ. — Sorbus.

PRUSSIC ACID (hydrocyanic acid).

CARBAZOTIC ACID.

NARCOTIC GASES. — Nitrogen, carbonic oxide, carburetted hydrogen, nitrous oxide, cyanogen gas, oxygen gas, hydrogen, sulphuretted hydrogen, carbonic acid gas.

III. Narcotico-acrid poisons include those which possess a double action, the one local and irritating, like that of the irritants, the other remote, and consisting of an impression on the nervous system. Sometimes they cause narcotism, which is generally of a comatose nature, often attended with delirium; but in one very singular group there is neither insensibility nor delirium, but merely violent spasms. At other times they excite inflammation where they are applied; this effect, however, is by no means constant. Those which inflame the tissues where they are applied, rarely occasion death in this manner. Some of them may produce very violent local symptoms, but they generally prove fatal through their operation on the nervous system.

Orfila divides this class of poisons into six groups, which may be thus stated, although it must be added, that they pass insensibly

into each other, and therefore cannot sometimes be well distinguished.

1. Those whose principal symptom is delirium, as atropa, datura, stramonium, &c.

2. Those whose principal symptom is tetanus, as nux vomica, strychnine, &c.

3. Those which also excite convulsions, but at the same time cause impaired sensibility and sleep, as cocculus indicus, camphor, upas antiar.

4. Poisonous mushrooms.

5. Poisonous grain.

6. Alcohol, ether, and empyreumatic oils.

Beck's Med. Jurisp., 745.

POLICE [πόλις, Gk., a city]. The regulation and government of a country or city, so far as regards its inhabitants. See METROPOLITAN POLICE ACTS.

POLICE-OFFICE, a metropolitan court, where the stipendiary magistrates, who are chosen from barristers of a certain standing, sit from day to day for the despatch of business. Their general duties and powers are precisely the same as those pertaining to the unpaid magistracy, except that one of them may sometimes act in cases which would require to be heard before two other justices.

There are several police offices in the neighbourhood of the metropolis, severally situated in Bow Street, Covent Garden, Queen Street, Westminster, Great Marlborough Street, Clerkenwell, Worship Street, Shoreditch, Lambeth, High Street, Marylebone, Southwark, Stepney, Greenwich and Woolwich, Hammermith, and Wandsworth.

POLICIES OF INSURANCE, *court of*. It was erected in pursuance of 43 Eliz., c. 12, which recites the immemorial usage of policies of assurance, "by means whereof it cometh to pass, upon the loss or perishing of any ship, there followeth not the undoing of any man, but the loss lighteth rather easily upon many than heavy upon few, and rather upon them that adventure not, than upon those that do adventure; whereby all merchants, especially those of the younger sort, are allured to venture more willingly and more freely, and that heretofore such assurers had used to stand so justly and precisely upon their credits, as few or no controversies had arisen thereupon; and if any had grown, the same had from time to time been ended and ordered by certain grave and discreet merchants, appointed by the Lord Mayor of the city of London, as men by reason of their experience fittest to understand and speedily decide those causes:" but that of late years divers persons had withdrawn themselves from that course of arbitration, and had driven the assured to bring separate actions at law against the assurer; it therefore enables the Lord Chancellor yearly to grant a standing commission to the Judge of the Admiralty, the Recorder of London, two doctors of the civil law, two common lawyers, and eight merchants; any three of whom, one being a civilian or a

barrister, are thereby, and by 13 & 14 Car. II., c. 23, empowered to determine in a summary way all causes concerning policies of assurance in London, with an appeal by way of bill to the Court of Chancery; but the jurisdiction being somewhat defective, as extending only to London, and to no other assurances but those on merchandize, and to suits brought by the assured only, and not by the insurers, such commissions have been long wholly disused; and insurance causes are now usually determined by the verdict of a jury of merchants, and the opinion of Judges in case of any legal doubts; whereby the decision is more speedy, satisfactory, and final. 3 *Bl. Com.* 74.

POLICY, the act of government, chiefly with respect to foreign powers; management of affairs.

POLICY OF INSURANCE, a contract between A. and B., that upon A.'s paying a premium equivalent to the hazard run, B. will indemnify or insure him against a particular event.

Upon a policy of marine or fire insurance, the remedy of the assured, in case of breach of contract by the insurer, is by covenant, where the policy is under seal; by assumpsit, where it is not. On a policy of life insurance under seal, the remedy is by debt or covenant; on one not under seal, debt or *indebitatus assumpsit*. See INSURANCE.

Politice legibus non leges politis adaptande. Hob. 154.—(Politics are to be adapted to the laws, and not the laws to politics.)

POLITICAL ARITHMETIC, the art of making calculations on matters relating to a nation; its revenues, value of land and effects, produce of lands or manufactures, population, and the general statistics of a country.

POLITICAL ECONOMY, the science which treats of the administration of the revenues of a nation; or the management and regulation of its resources, and productive property and labor.

POLITICS [πολιτική, Gk.], the science of government; the art or practice of administering public affairs.

POLITY [πολιτεία, Gk., the government of a city], a form of government; civil constitution.

POLL [polle, pol, Dut., the top, from the Su. Goth., *hollur*, a globe], the head; a catalogue or list of persons; a register of heads. Also, an election in which votes are registered. See DEED POLL.

POLLARDS or **POLLENGERS**, trees which have been lopped, distinguished from timber-trees. *Plowd.* 469.

POLL-MONEY, **POLL-SILVER**, **POLL-TAX**, a capitation tax. It was formerly assessed by the head on every subject according to rank.

POLLS, *challenge to the*. See CHALLENGE.

Polygamia est plurium simul virorum uxorem connubium. 3 *Inst.* 88.—(Polygamy is the marriage of many husbands or wives at one time.)

POLYGAMY [πολυ, Gk., many, and γάμος, marriage], plurality of wives or husbands. See **BIGAMY**.

It is prohibited among Christians, but it is permitted among the Asiatic religions.

Polygamy was condemned by that primordial institution which, in order to secure the propagation of the species, joined in marriage one man and one woman. *Gen. i. 27*. The old and pious patriarchs religiously observed this institution. But before the time of Moses, morals had become very much corrupted, and not only the prostitution of females but of boys was very common among many nations, and even made a part of the divine worship. To prevent these evils, to which the Greek and Roman philosophers refused, in progress of time, to oppose any decided resistance, Moses made many regulations, which may be found in several parts throughout the Pentateuch. Lameck is the first mentioned as having two wives, and the example which he set found no lack of imitation. After the deluge, the example of Noah and his sons was a good one, but it was not followed. Polygamy very much prevailed in the time of Moses, as we may gather from the fact, that the first born of 603,550 men, above twenty years of age, amounted merely to the number of 22,373. *Numb. iii. 42; Jahn's Bib. Antiq., pt. i., c. x., §§ 150, 151.*

POLYGARCHY [πολυ, Gk., many, and ἀρχή, government], that kind of government which is in the hands of many.

PONDUS, poundage, *i. e.*, a duty paid to the Crown according to the weight of merchandise.

PONDUS REGIS, the standard weight appointed by our ancient kings.

PONE. If goods have been replevied by virtue of a *replegiari facias* (which is now rarely if ever the case) the plaint in a county court is removed by writ of *pone*. It is an original writ obtained from the cursitor, bearing *teste* after the entry of the plaint in the county court, and returnable on a general day in term, wheresoever, &c. It is also the proper writ to remove all suits which are before the sheriff by writ of *justicies*.

PONE PER VADIUM, a writ to the sheriff to summon the defendant to appear and answer the plaintiff's suit, on his putting in sureties to prosecute: it is so called from the words of the writ, *pone per vadium et salvos plegios*—"put by gage and safe pledges, A. B., the defendant." It issues out of the Common Pleas, being grounded on the non-appearance of the defendant, at the return of the original writ; and thereby the sheriff is commanded to attach him by taking gage, *i. e.*, certain of his goods which he shall forfeit if he do not appear; or by making him find safe pledges or sureties, who shall be amerced in case of his non-appearance. *3 Bl. Com. 210*.

Previous to the Uniformity of Process Act (2 Wm. IV., c. 39), it was also the first and immediate process, without any previous summons upon action of trespass, *vi et armis*,

or for other injuries which, though not forcible, were yet trespasses against the peace, as deceit and conspiracy; where the violence of the wrong required a more speedy remedy; and therefore the original writ commanded the defendant to be at once attached without any precedent warning. These actions are now commenced by the ordinary writ of summons. *1 & 2 Vict., c. 110*.

PONENDIS IN ASSISIS, an abolished writ to empannel juries.

PONENDUM IN BALLIUM, a writ commanding that a prisoner be bailed in cases bailable. *Reg. Orig. 133*.

PONENDUM SIGILLUM AD EXCEPTIONEM, a writ by which justices are required to put their seals to exceptions exhibited by defendant against plaintiff's evidence, verdict, or other proceedings before them, according to the Stat. *West. 2, 13 Ed. I., st. 1, c. 31*. See **BILL OF EXCEPTIONS**.

PONTAGE [*pons*, Lat., a bridge], duty paid for the reparation of bridges; also, a due to the lord of the fee for persons or merchandizes that pass over rivers, bridges, &c.

PONTIBUS REPARANDIS, a writ directed to the sheriff, &c., requiring him to charge one or more to repair a bridge. *Reg. Orig. 153*.

POOR LAW AMENDMENT ACT, 4 & 5 Wm. IV., c. 76.

POOR LAWS. The poor of England, till the time of Henry VIII., subsisted entirely upon private benevolence, and the charity of well-disposed Christians.

The poor in Ireland had, till of late, no relief but from private charity. But by 1 & 2 Vict., c. 56, intituled "An Act for the more effectual Relief of the destitute Poor in Ireland," the authority of the poor law commissioners was extended to that part of the realm. This act was amended by 2 & 3 Vict., c. 1.

By 43 Eliz., c. 2, which is generally considered as the foundation of the modern poor law, overseers of the poor were appointed in every parish. It is provided by this statute, that the churchwardens of every parish shall be overseers of the poor; and that, besides these, there shall be appointed, as overseers in each parish, two, three, or four, but not more, of the inhabitants, such last-mentioned overseers to be substantial householders, and to be nominated yearly in Easter week, or within one month after, by two justices dwelling near the parish.

Their office and duty, according to the same statute, were principally these: 1st, to provide work for all persons who had no means to maintain themselves, and used no ordinary trade; and, 2dly, to raise competent sums for the necessary relief of the lame, impotent, old, blind, and such others being poor, and not able to work. For these joint purposes they were empowered to make and levy rates upon the several inhabitants of the parish by the same act of Parliament, which has been further explained and enforced by several subsequent statutes.

By 4 & 5 Wm. IV., c. 76 (the Poor Law Amendment Act), the administration of the parochial funds, and the management of the poor throughout the country, were placed for a period of five years, which has been since extended to the year 1847, under the superintendence and controul of a central board of three persons (the Crown being empowered to appoint a fourth, by 1 & 2 Vict., c. 56, § 119), called "The Poor Law Commissioners," who have power to make such regulations as they shall think proper, for guidance of the parochial authorities (whether consisting of guardians, select vestries, or overseers), in all matters of that description, and who are to be aided in their operations by a certain number of assistant commissioners. This extensive power is subject, however, to the check of superior authority. For all general rules prescribed by the commissioners must be submitted to one of the Principal Secretaries of State before they come into operation, and if disallowed by her Majesty in council, have no effect.

They are also to be laid, from time to time, before the Houses of Parliament, where general reports of the proceedings of the commissioners are moreover to be annually deposited. The act farther empowers the commissioners, where they think it desirable, to direct that the relief of the poor in any parish shall be administered by a board of guardians, to be elected by the owners of property and rate-payers, in such parish, in such manner as in the act particularised.

They are also intrusted by the legislature with the important power of consolidating, at their own discretion, so far as the relief and management of the poor is concerned, several parishes into one united body or union, under the government of a single board of guardians, to be elected by the owners and rate-payers of the component parishes; and the united parishes are to have a common workhouse provided and maintained at their common expense, though each is to remain separately chargeable with the expense of its own poor, whether relieved in or out of such workhouse.

The principle of consolidation may indeed be carried farther, if such a measure shall appear expedient to those who represent the different parochial interests; for by consent of the guardians in any union, whether formed under the act or previously existing, the component parishes may, under sanction of the poor law commissioners, be united for the purposes of settlement and of rating, as well as that of relief and management. On the other hand, however, it is provided, that no union shall in future take place under Gilbert's Act, without the previous consent of the commissioners.

According to the present law, a settlement is acquired by the following methods:—1st, By birth; for wherever a child is first known to be, that is always *primâ facie*, and until some other can be shown, the place of

its settlement. But if its parent can be proved to have acquired a settlement, either by birth or otherwise in another parish, then the *primâ facie* settlement of the child will be superseded by a derivative one or a settlement. 2d, By parentage; for all legitimate children take the last settlement of the father, and after his death, of the mother, till they are emancipated from parental authority by marriage, or by attaining the age of twenty-one, and living permanently separate from the parent, or contracting some relation inconsistent with domestic subjection. And when emancipated, they retain the parental settlement last acquired before that event took place. A bastard child, on the other hand, having in the eye of the law no parent, was formerly held incompetent to claim a derivative settlement. By a recent provision, however, in the Poor Law Amendment Act, an illegitimate child, born since the act passed, is now to follow the settlement of his mother until he attains the age of sixteen, or gains another for himself. But besides those of birth or parentage, there are also settlements acquired by the party's own act. For a female gains a derivative settlement, 3d, by marriage, *i. e.*, she may claim the settlement which belongs to her husband, and she retains that after his death. If the man have no settlement, being born abroad, and having acquired none, or his settlement is unknown, she retains that which belonged to her before marriage. But she cannot in any case acquire one in her own right during the marriage. A settlement may also be acquired, 4th, by renting a tenement coupled with residence in the same parish for forty days. For this purpose, however, it is requisite that the party should have *bonâ fide* rented a tenement, consisting of a separate or distinct dwelling-house, or building, or of land, or of both, for the sum of 10*l.* a year, at the least for the term of one whole year; and that he should have occupied the same under such hiring, and actually paid the rent, to the amount of 10*l.*, for the term of one whole year at the least, and that for the same period he should have been assessed to and paid the poor rate in respect thereof. 5th, A settlement may also be gained by being bound apprentice, under indenture or other deed, and inhabiting for forty days under such binding, either in the same parish where the service takes place, or a different one. But no settlement can be acquired by being apprenticed in the sea-service, or to a householder exercising the trade of the seas, as a fisherman, or otherwise. The deed must in all cases be executed by the apprentice, except in the case of parish apprentices. 6th, A settlement is gained of a temporary kind in any parish, by having an estate of one's own there, of whatever value, and whether the interest be legal or equitable. This particular species of settlement is founded on the principle of the common law, that a man shall not be removed from his own property

It is provided, however, that no person shall retain a settlement gained by virtue of any estate or interest in a parish for any longer time than he shall inhabit within ten miles thereof; and in case he shall cease to inhabit within that distance, and shall afterwards become chargeable, he shall be liable to be removed to the parish in which he was settled previously to such inhabitancy, or if he have gained a settlement in some other parish since the inhabitancy, then to such other parish. Lastly, a settlement may be gained by being charged to and paying the public taxes and levies of the parish, excepting those for scavengers and highways, and the duties on houses and windows. But it is provided, by 35 Geo. III., c. 101, § 4, that no person shall gain a settlement on this ground in respect of any tenement or tenements not being of the yearly value of 10*l.*; and by 6 Geo. IV., c. 57, that a settlement shall not be acquired by paying parochial rates for any tenement, not being the person's own property, unless it consists of a separate and distinct dwelling-house, or building, or land, or both, *bonâ fide* rented by him for 10*l.* a year, at the least, for a whole year, and be occupied under such hiring for a year at least. This title to a settlement is, therefore, nearly merged in that of renting a tenement.

The 9 & 10 Vict., c. 66, amends the laws relating to the removal of the poor.

The duty of making and levying the poor rate or parochial fund, out of which the relief is to be afforded, still belongs, as before the late changes in the law of relief, to the churchwardens and overseers; and the concurrence of the inhabitants is not necessary. But for the better execution of these duties, the recent acts relating to the amendment of the poor law authorize the appointment of collectors and assistant overseers. The rate is raised prospectively for some given portion of the year, and upon a scale adapted to the probable exigencies of the parish; and the act of Elizabeth directs, that it should be raised by "taxation of every inhabitant, parson, vicar, and other, and of every occupier of lands, houses, tithes impropriate, appropriations of tithes, coal mines, or saleable underwoods in the parish." As an occupier, a man is rateable for all lands which he occupies in the parish, whether he is resident or not; but the tenant and not the landlord is considered as the occupier within this statute. As an inhabitant, a man was formerly liable to be rated according to his apparent ability, that is, according to the value of the local and visible personal property he had within the parish, and of which he made profit; but by 3 & 4 Vict., c. 89, continued by 4 & 5 Vict., c. 50; 6 & 7 Vict., c. 48, and 7 & 8 Vict., c. 40, the liability to taxation, in regard to inhabitancy, is now taken away until October, 1845.

By 43 Eliz., c. 2, § 1, no rate can be deemed valid unless it be allowed by two justices, and public notice thereof be given

in the parish church on the Sunday next after the same has been allowed. The allowance by the justices is a mere matter of form; but after allowance and publication, any person aggrieved by the rate, and having reasonable objection to it, as irregular or unequal, may appeal against it to the next practicable quarter sessions of the county, riding, or division, or, in some cases, of the corporation or franchise in which the parish is situate.

POPE [*pápas*, Gk., father], the bishop of Rome.

POPERY, the religious doctrines and practices adopted and maintained by the Church of Rome. See **CORONATION OATH**.

POPULACE or **POPULACY** [*populus*, Lat.], the vulgar; the multitude.

POPULAR ACTION, an action given by statute to any one who will sue for a penalty.

PORTER, an officer who carries a white or silver rod before the justices in *cyre*, so called *à portando virgum*; also, a person employed to carry messages, parcels, &c. Porters in the City of London are regulated by the corporation.

PORTERAGE, a kind of duty formerly paid at the custom-house to those who attended the water-side, and belonged to the package-office; but it is now abolished: also, the charge made for sending parcels.

PORTGREVE or **PORTREVE**, a magistrate in certain sea coast towns.

PORTION, that part of a person's estate which is given or left to a child.

There are two ways of raising portions, one by sale or mortgage, the other by perception of profits. Interest is payable on portions from the time they become due.

PORTIONER, a minister, who, together with others, serves a benefice, because he has only a portion of the tithes or profits of the living; also, an allowance which a vicar commonly has out of a rectory or impropriation.

PORTMEN, the burgesses of Ipswich and of the Cinque Ports. *Camden*.

PORTMOTE, a court held in haven towns or ports, and sometimes in inland courts.

PORTS, harbours; safe stations for ships. See **HAVENS**.

PORTSALE, a public sale of goods to the highest bidder.

PORTSOKA or **PORTSOKNE**, the suburbs of a city, or any place within its jurisdiction.

PORTUAS, a breviary. *Cowell*.

Portus est locus in quo exportantur et importantur merces. 2 Inst. 148.—(A port is a place where goods are imported or exported.)

POSITIVE EVIDENCE, proof of the very fact.

Posito uno oppositorum negatur alterum. 3 Rol. Rep. 422.—(One of two opposite positions being affirmed, the other is denied.)

POSSE, a possibility. A thing is said to be *in posse* when it may possibly be; *in esse* when it actually is.

POSSE COMITATUS, the power of a county,

including the aid and attendance of all knights and other men above the age of fifteen within the county; but ecclesiastical persons, and such as labour under any infirmity, are not compellable to attend. It is used where a riot is committed, a possession is kept on a forcible entry, or any force or rescue made contrary to the commandment of the Queen's writ, or in opposition to the execution of justice.

POSSESSIO. Paulus (*Dig. 41, tit. 2, § 1*), observes, "*Possessio appellata est, ut et Labeo ait a pedibus quasi positio: quia naturaliter tenetur ab eo qui insistit.*" The absurdity of the etymology and of the reason are equal. The elements of *possidere* are either *pot* (*pot-is*) and *sedere*: or the first part of the word is related to *apud*, and the cognate Greek form of *πоти* (*πρός*).

Possessio, in its primary sense, is the condition or power by virtue of which a man has such a mastery over a corporeal thing as to deal with it at his pleasure, and to exclude other persons from meddling with it. This condition or power is detention; and it lies at the bottom of all legal senses of the word possession. This possession is no legal state or condition, but it may be the source of rights, and it then becomes *possessio* in a juristical or legal sense. Still, even in this sense, it is not in any way to be confounded with property (*proprietas*). A man may have the juristical possession of a thing without being the proprietor, and a man may be the proprietor of a thing without having the juristical possession of it, and consequently without having the detention of it. (*Dig. 41, tit. 2, § 12*.) Ownership is the legal capacity to operate on a thing according to a man's pleasure, and to exclude everybody else from doing so. Possession, in the sense of detention, is the actual exercise of such a power as the owner has a right to exercise. The term *possessio* occurs in the Roman jurists in various senses. There is *possessio* generally, and *possessio civilis*, and *possessio naturalis*.

Possessio denoted, originally, bare detention. But this detention, under certain conditions, becomes a legal state, inasmuch as it leads to ownership through *usucapion*. Accordingly the word *possessio*, which required no qualification so long as there was no other notion attached to *possessio*, requires such qualification when detention becomes a legal state. This detention, then, when it has the conditions necessary to *usucapion*, is called *possessio civilis*, and all other *possessio* as opposed to *civilis* is *naturalis*. *Smith's Dict. of Antiq.*

Possessio est quasi pedis positio. 3 Co. 42.—(Possession is, as it were, the position of the foot.)

POSSESSIO FRATRIS, if a father have two sons, A. and B., by different wives, now these two brethren are not brethren of the whole blood, and therefore shall never inherit to each other, but the estate shall rather escheat to the lord. Nay, even if the father die,

and his lands descend to his eldest son A., who enters thereon, and dies seized without issue, still B. shall not be heir to this estate, because he is only of the half blood to A., the person last seized; but it shall descend to a sister (if any) of the whole blood to A.; for in such cases the maxim is, that the seisin, or *possessio fratris*, makes the sister the heiress. Yet, had A. died without entry, then B. might have inherited, not as heir to A., his half brother, but as heir to their common father, who was the person last actually seized. Abolished by 3 & 4 Wm. IV., c. 106.

Possessio fratris de feodo simplici facit sororem esse hæredem. 3 Co. 42.—(Possession of the brother in fee simple makes the sister to be heir.)

The *possessio fratris* is abolished by 3 & 4 Wm. IV., c. 106.

Possessio pacifica per annos 60 facit jus. Jenk. Cent. 26.—(Peaceable possession for sixty years gives a right.)

POSSESSION, the state of owning or having in one's own hands or power; the thing possessed.

It is either *actual*, where a person enters into lands or tenements descended or conveyed to him; *apparent*, which is a species of presumptive title where land descended to the heir of an abator, intruder, or disseisor, who died seized; *in law*, when lands, &c., are descended to a man, and he has not actually entered into them; or *naked*, that is, mere possession, without colour of right.

POSSESSION, *writ of*, the process of execution in an action of ejectment. See **EJECTMENT**; **HABERE FACIAS POSSESSIONEM**.

POSSESSORY ACTION, the action of trespass, the gist of which is the injury to the possession; a plaintiff, therefore, cannot maintain it, unless at the moment of the injury he was in actual or constructive, immediate and exclusive possession.

Possibilitas post dissolutionem executionis nunquam reviviscatur. 1 Rol. Rep. 321.—(Possibility is never revived after the dissolution of the execution.)

POSSIBILITAS, an act wilfully done, as *impossibilitas* is a thing done against the will.

POSSIBILITY, expectation, an uncertain thing, which may or may not happen.

It is either *near*, or *ordinary*, as where an estate is limited to one after the death of another; or *remote*, or *extraordinary*, as where one man shall be married to a woman, and then that she shall die, and he be married to another.

POSSIBILITY ON A POSSIBILITY, a remote possibility, as if a remainder be limited in particular to A.'s son John, or Edward, it is bad if he have no son of that name, for it is too remote a possibility that he should not only have a son, but a son of that particular name. *Cholmley's case*, 2 Rep. 51.

POST, a conveyance for letters or dispatches. The name is borrowed hence, that the horses *à positi*, placed, posted, or disposed, from distance to distance. The word is also

applied to the person himself; the houses where he takes up and lays down his charge; and the stages or distances between house and house. Hence the phrases post-boy, post-horse, post-house, &c.

POST, suborned, hired to do an improper action. See **KNIGHTS OF THE POST**.

POST, *writ of entry in*, an abolished writ given by statute of Marlbridge, 52 Hen. III., c. 30, which provided, that when the number of alienations or descents exceeded the usual degrees, a new writ should be allowed, without any mention of degrees at all.

POSTAGE, the duty or charge imposed on letters or parcels conveyed by post.

POST AND PER. See **PER AND POST**.

POST-DATE, to date later than the real date.

A penalty of 100*l.* is imposed by § 12 of the 55 Geo. III., c. 184, for post-dating bills, notes, &c., on stamps which do not cover the real term for which they were drawn. Bankers' checks must not be post-dated without being on a bill stamp, under a penalty of 100*l.* 9 Geo. IV., c. 49.

POST DIEM (after the day).

POST-DISSEISIN, a writ that lies for him who, having recovered lands or tenements by a force of *novel disseisin*, is again disseised by the former disseisor.

POST CONQUESTUM (after the conquest).

POSTEA (afterwards), the return of the Judge before whom a cause was tried, after a verdict, of what was done in the cause; and is endorsed on the back of the *nisi prius* record.

POST ENTRY. When goods are weighed or measured, and the merchant has got an account thereof at the Custom House, and finds his entry already made too small, he must make a post or additional entry for the surplusage, in the same manner as the first was done. As a merchant is always in time, prior to the clearing of the vessel, to make his post, he should take care not to over-enter, to avoid as well the advance as the trouble of getting back the overplus. However, if this be the case, and an over-entry has been made, and more paid or bonded for customs than the goods really landed amount to, the land-waiter and surveyor must signify the same upon oath made and subscribed by the person so over-entered, that neither he nor any other person, to his knowledge, had any of the said goods over-entered on board the said ship, or anywhere landed the same without payment of custom; which oath must be attested by the collector or comptroller, or their deputies, who then compute the duties, and set down on the back of the certificate, first in words at length, and then in figures, the several sums to be paid. *McCulloch's Comm. Dict.*

Posteriora derogant prioribus.—(Things subsequent lessen things prior.)

POSTERIORITY, coming after, the correlative of *priority*.

POSTERITY, succeeding generations, descendants, opposed to *ancestry*.

Post executionem status lex non patitur possibilitatem. 3 Buls. 108.—(After the execution of the estate, the law suffers not a possibility.)

POST-FINE, a duty that was paid to the king for a fine formerly acknowledged in his court, paid by the cognisee after the fine was fully passed.

POSTHUMOUS CHILD, a child born after his father's death; or taken out of the body of a dead mother. 10 & 11 Wm. III., c. 16.

POSTING, registering methodically; transcribing from one book to another, especially to carry accounts from the waste book or journal to the ledger.

POST LITEM MOTAM, *depositions*. Where they relate to the subject of suit, they are not admissible when made after the litigation has commenced. 1 Stark. Evid. 319.

POSTMAN, a barrister in the Court of Exchequer, who has precedence in motions; also, a letter carrier.

POST-MASTER, one who has charge of public conveyance of letters; also, a portionist.

POST-MASTER GENERAL, he who presides over the posts or letter carriers. There were two before 1822, when one was abolished.

POSTNATE, subsequent.

POST-NATUS, the second son, or one born afterwards.

POST-NOTE, a bank note, intended to be transmitted to a distant place by the public mail, and made payable to order; differing in this from a common bank note, which is payable to the bearer.

POST NUPTIAL SETTLEMENT, a settlement made after marriage; it is generally deemed voluntary. See **FRAUDULENT CONVEYANCES**.

POST OBIT BOND, a bond given by an expectant to become due on the death of a person from whom he will have property, &c.

POST-OFFICE, an office where letters are delivered. See the Penny Postage Act 3 & 4 Vict., c. 96.

POST TERMINUM (after the term).

POST-VE NE, to come after.

POSTULATION, a petition.

POTENTIA PROPINQUÆ (common possibility).

Potentia debet sequi justitiam, non antecedere. 3 Buls. 199.—(Power ought to follow, not precede, justice.)

Potentia est duplex, remota et propinqua; et potentia remotissima et vana est quæ nunquam venit in actum. 11 Co. 51.—(Power is of two kinds, remote and near; that which never comes into action is a power the most remote and vain.)

Potentia inutilis frustra est. Office of Exec. 220.—(Useless power is vain.)

Potestas regis, est facere justitiam. 2 Inst. 374.—(The power of the king is to execute justice.)

Potestas regis, juris sit non injuriæ. 3 Inst. 236.—(The king's power is of right, not of injury.)

Potestas strictè interpretatur. Jenk. Cent. 17.—(Let power be strictly interpreted.)

Potestas suprema seipsum dissolvere potest ligare non potest. Bacon.—(Supreme power can dissolve, but cannot bind itself.)

Potior est conditio defendentis.—(The condition of a defendant is better.)

Potior est conditio possidentis.—(The condition of one possessing is better.) 2 *Wms. Exors.* 836.

POUND [*pund*, Sax.], a certain weight, consisting, in troy weight, of 12, in avoirdupois, of 16 ounces; the sum of 20s., which formerly weighed a pound; also, a penfold, an enclosure, a prison in which beasts are enclosed, for any damage or trespass done by them, until they are replevied or redeemed. It is either *overt*, i. e., open overhead; or *covert*, i. e., close. If cattle are kept in a common pound, no notice is necessary to the owner to feed them. A pound keeper is bound to receive everything offered to his custody, and is not answerable whether the thing were legally pounded or not. 1 *T. R.* 62.

POUNDAGE, a certain sum deducted from a pound; sheriffs' poundage on writs of *ca. sa.* is abolished, 5 & 6 *Vict.*, c. 98. The amount of their poundage is 12*d.* for every 20s. if the sum levied does not exceed 100*l.*, and 6*d.* for every 20s. over and above that sum. The penalty is 40*l.* if more is exacted. 29 *Eliz.*, c. 4; 1 *Vict.*, c. 55.

POUND-BREACH, breaking open a pound in order to take cattle; it is an indictable offence, because the cattle is deemed to be in the possession of the law.

POUR FAIR PROCLAIMER, an ancient writ addressed to the mayor or bailiff of a city or town, requiring him to make proclamation concerning nuisances, &c. *F. N. B.* 176.

POURPARTY, to divide the lands which fall to parceners. *O. N. B.* 11.

POURPRESTURE [*pourpris*, Fr., an enclosure], anything done to the nuisance or hurt of the Queen's demesnes, or the highways, &c.; by enclosure or buildings, endeavouring to make that private which ought to be public.

Skene makes three sorts of this offence; 1, against the Crown; 2, against the lord of the fee; 3, against a neighbour. 2 *Inst.* 38.

POUR SEISIR TERRES, an ancient writ whereby the Crown seised the land which the wife of his tenant, who held *in capite* deceased, had for her dower, if she married without leave; it was grounded on the statute of the king's prerogative. It is abolished. 12 *Car. II.*, c. 24.

POURSUIVANT, a king's messenger; those employed in martial causes are called *Poursuivant at Arms*.

POURVEYANCE or **PURVEYANCE**, the providing necessities for the Sovereign. It is now abolished. 12 *Car. II.*, c. 24.

POURVEYOR or **PURVEYOR**, a buyer; one who provided for the royal household.

POWER, an authority which one gives to another to act for him, or to do some certain acts, as to make leases, raise portions, or the like. 2 *Lill. Abr.* 339.

Powers are either common law authorities, declarations, or directions, operating only on the conscience of the persons in whom the legal interest is vested, or declarations or directions deriving their effect from the Statute of Uses. A power given by a will to A., an executor, to sell an estate, to whom no estate is devised, and a power given by an act of Parliament to sell estates, as in the instance of the Land Tax Redemption Acts, are both common law authorities. The estate passes by force of the will or act of Parliament, and the person who executes the power merely nominates the party to take the estate. A power of attorney is also a common law authority. A power to dispose of an estate or sum of money of which the legal estate is vested in another, is a power of the second sort. The legal interest is not divested by the execution of the power, but equity will compel the person seised of it to clothe the estate created with the legal right. Powers deriving their effect from the Statute of Uses are either given to a person who has an estate limited to him by the deed creating the power, or who had an estate in the land at the time of the execution of the deed, or to a stranger, to whom no estate is given, but the power is to be exercised for his own benefit, or to a mere stranger to whom no estate is given, and the power is for the benefit of others.

Powers are either—

1. *Collateral*; which are given to strangers, i. e., to persons who have neither a present nor future estate or interest in the land. These are also called *simply collateral*, or *powers not coupled with an interest*, or *powers not being interests*. These terms have been adopted to obviate the confusion arising from the circumstance that powers in gross have been by many called *powers collateral*. *Savile v. Blacket*, 1 *P. Wms.* 777.

2. *Relating to the land*, which are either—

(a) *Appendant* or *appurtenant*, because they strictly depend upon the estate limited to the person to whom they are given. Thus, where an estate for life is limited to a man, with a power to grant leases in possession, a lease granted under the power may operate wholly out of the life estate of the party executing it, and must in every case have its operation out of his estate during his life. Such an estate must be created, which will attach on an interest actually vested in himself: or,

(b) *In gross*, which are given to a person who had an interest in the estate at the execution of the deed creating the power, or to whom an estate is given by the deed, but which enable him to create such estates only as will not attach on the interest limited to him. Of necessity, therefore, where a man seised in fee settles his estate on others, reserving to himself only a particular power, the power is in gross. A power to a tenant for life to appoint the estate after his death amongst his children, a power to jointure a wife after his death, a power to raise a term

of years to commence from his death, for securing younger childrens' portions, are all powers in gross.

A power may, with reference to the particular estates in the land over which it extends, have different aspects; it may, in regard to one, be a power appendant, in respect to the other, a power in gross. Thus, where an estate is settled to A. for life, remainder to B. in tail, remainder to A. in fee, and A. has a power to jointure his wife after his death, this power is in gross as to the estate for life, but appendant or appurtenant as to the remainder in fee. It may affect the latter, but never can attach on the former.

An important distinction is established between *general* and *particular* powers. By a general power, we understand a right to appoint to whomsoever the donee pleases. By a particular power, it is meant that the donee is restricted to some objects designated in the deed creating the power, as to his own children.

A power shall be expounded strictly; therefore, if a man have power to make leases generally, this extends to make leases in possession only, and not in reversion.

Powers appendant may be destroyed by release, bargain and sale, or feoffment; powers in gross, by feoffment or release; but powers simply collateral, cannot be destroyed by the act of the person to whom they are given. As the appointer is merely an instrument, the appointee shall be in by the original deed.

No particular ceremonies are prescribed by law for the valid execution of powers; but the intention must be strictly followed, except in the case of wills. 1 Vict., c. 26, § 10.

Consult *Sugden or Chance*, on "*Powers*;" and see ILLUSORY APPOINTMENT ACT; and MISTAKE.

POWER OF ATTORNEY. See LETTER OF ATTORNEY.

POYNDING. See POINDING.

POYNING'S LAW, an act of Parliament made in Ireland in the reign of Henry VII.; 10 Hen. VII., c. 22; so called, because Sir Edward Poyning was lieutenant there when it was made, whereby all general statutes before then made in England were declared of force in Ireland, which, before that time, they were not. 12 Rep. 109.

PRACTICE, the form and manner of conducting and carrying on suits, actions, or prosecutions at law or in equity, civil or criminal, through their various stages, from the commencement to final judgment and execution, according to the principles and rules laid down by the several courts.

PRACTITIONER, he who is engaged in the exercise or employment of any art.

PRÆCEPTORES, a kind of benefices, having their name from being possessed by the more eminent Templars, whom the chief master, by his authority, created and called *Præceptores Templi*. *Mon. Angl.* ii. 543.

PRÆCIPE (command), a slip of paper upon which the particulars of a writ are written; it is lodged in the office out of which the required writ is to be issued.

Also, an original writ, and in the alternative, commanding the defendant to do the thing required, or show the reason why he has not done it; and the writ is drawn up in the form of a *præcipe* or command, to do something, or show cause to the contrary, giving the defendant his choice to redress the injury or stand the suit. 3 Bl. Com. 273. It is abolished.

PRÆCIPE IN CAPITE, a writ out of Chancery for a tenant holding of the Crown in *capite*, viz., in chief. *Mag. Chart.* c. 24.

PRÆCIPE QUOD REDDAT, the form of a writ which extends as well to a writ of right as to other writs of entry or possession, beginning "*Præcipe, A quod reddat, B unum messuagium*," &c. O. N. B. 13. Abolished.

PRÆCIPE QUOD TENEAT CONVENTIONEM, the writ which commenced the action of covenant in fines, which are abolished by 3 & 4 Wm. IV., c. 74.

PRÆCIPE, *tenant to the*, the person to whom some freehold estate in possession was conveyed, in order to make him tenant in the action to levy a fine. It is abolished.

PRÆCIPITIUM, the punishment of casting headlong from some high place.

PRÆCOGNITA, things to be previously known, in order to understanding something which follows.

PRÆDIA VOLANTIA (volatile estates). 2 Bl. Com. 428.

PRÆDIAL TITHES [*prædium*, Lat., ground], such as arise merely and immediately from the ground; as grain of all sorts, hay, wood, fruit, herbs. 2 Bl. Com. 23.

PRÆDICT (aforesaid). *Hob.* 6.

Prædium domini regis est directum dominum, cujus nullus auctor est nisi Deus. Co. Lit. 1. — (The power of our lord the king, is a direct power derived from God.)

PRÆFECTUS VILLÆ (the mayor of a town).

PRÆFINE, the fee paid on suing out the writ of covenant, on levying fines, before the fine was passed. 2 Bl. Com. 350.

PRÆMIUM PUDICITIÆ, a consideration given to a previously innocent and virtuous woman by the person who may have seduced her. 2 P. Wms. 452.

PRÆMUNIRE [a barbarous word for *præmoneri*, Lat., to be forewarned]. It is an offence so called from the words of the writ preparatory to the prosecution thereof: *præmunire facias* A. B. (cause A. B. to be forewarned) that he appear before us to answer the contempt wherewith he stands charged; which contempt is particularly recited in the preamble to the writ.

The statutes of *præmunire* were framed to encounter papal usurpation, the first of which was made in the thirty-first year of the reign of Edward I., and was the foundation of all the subsequent statutes of *præ-*

munire, which is an offence immediately against the Sovereign, because every encouragement of the papal power is a diminution of the authority of the Crown. Subsequently several very severe acts of Parliament were passed upon the subject.

The original meaning of the offence is, then, introducing a foreign power into this land, and creating *imperium in imperio*, by paying that obedience to papal process which constitutionally belonged to the Sovereign alone long before the Reformation; at which time the penalties of *præmunire* were indeed extended to more papal abuses than before, as the kingdom then entirely renounced the authority of the see of Rome, though not all the corrupted doctrines of the Church of Rome.

The penalties of *præmunire* were subsequently applied to other heinous offences:

1. By 1 & 2 Ph. & M., c. 8, to molest the possessors of abbey lands, granted by Parliament to Henry VIII. and Edward VI., is a *præmunire*.

2. To obtain any stay of proceedings, other than by arrest of judgment or writ of error, in any suit for a monopoly, is likewise a *præmunire*, by 21 Jac. I., c. 3.

3. To attempt to restrain the importation or making of gunpowder is also a *præmunire*, by 16 Car. I., c. 21.

4. On the abolition by 12 Car. II., c. 24, of purveyance and the prerogative of pre-emption, or taking any victual, beasts, or goods for the king's use, at a stated price, without the consent of the proprietor, the exertion of any such power for the future was declared to be indictable; and in any suit thereon to obtain any stay of proceedings, other than by arrest of judgment or writ of error, is made a *præmunire*.

5. To assert maliciously and advisedly by speaking or writing, that both or either house of Parliament have a legislative authority without the Sovereign, is declared a *præmunire* by 13 Car. II., c. 1.

6. By the Habeas Corpus Act, it is a *præmunire*, and incapable of the royal pardon, besides other heavy penalties, to send any subject of this realm a prisoner, under certain exceptions in the act specified, into parts beyond the seas.

7. By 7 & 8 Wm. III., c. 24, serjeants, counsellors, proctors, attornies, and all officers of courts practising, without having taken the proper oaths, are guilty of a *præmunire*.

8. By 6 Anne, c. 7, to assert maliciously and directly, by preaching, teaching, or advised speaking, that any person, other than according to the acts of settlement and union, has any right to the throne of these kingdoms, or that the Sovereign and Parliament cannot make laws to limit the descent of the Crown, is a *præmunire*, as writing, printing, or publishing the same doctrines, amounted to treason.

9. By 6 Anne, c. 83, if the assembly of peers in Scotland, convened to elect their

sixteen representatives in the British Parliament, shall presume to treat of any other matter save only the election, they incur the penalties of a *præmunire*.

10. The 12 Geo. III., c. 11, subjects to the penalties of *præmunire* all such as knowingly or wilfully solemnize, assist, or are present at any forbidden marriage of such of the descendants of King George II. as are by that act prohibited to contract matrimony without the consent of the Crown.

The punishment is, that, from the conviction, the defendant shall be out of the Crown's protection, and his lands and tenements, goods and chattels, forfeited to the Crown; and that his body shall remain in prison during the royal pleasure, or, as some authorities have it, during life. It is not lawful, however, to kill any person attainted in a *præmunire*. 5 Eliz., c. 1; 4 Step. Com. 202.

Præmuniti, i. e., *præmoniti*. Co. Lit. 129.—(Forearmed, that is, forewarned.)

PRÆPOSITUS, an officer next in authority to the alderman of a hundred, called *præpositus regius*; or a steward or bailiff of an estate, answering to the *wicnere*. *Anc. Inst. Eng.*

Also, the person from whom descents are traced.

PRÆPOSITUS ECCLESIAE, a church-reeve or churchwarden.

PRÆPOSITUS VILLÆ, a constable of a town or petty constable.

Præpropera consilia raro sunt prospera. 4 Inst. 57.—(Hasty counsels are seldom good.)

Præscriptio est titulus ex usu et tempore substantiam capiens ab auctoritate legis. Co. Lit. 113.—(Prescription is a title by authority of law, deriving its force from use and time.)

Præscriptio in feodo non acquirit jus. Doct. and Stud.—(Prescription in fee acquires not a right.)

Præsentare nihil aliud est quam præsto dare seu offerre. Co. Lit. 120.—(To present, is no more than to give or offer on the spot.)

Præsentia corporis tollit errorem nominis: et veritas nominis tollit errorem demonstrationis. Bac. Max. 224.—(The presence of the body cures error in the name: the truth of the name cures an error of description.)

Præstat cautela quam medela. Co. Lit. 304.—(Caution is better than cure.)

Præsumitur rex habere omnia jura in scrinio pectoris sui. Co. Lit. 99.—(The Sovereign is presumed to have all the laws in the casket of his own bosom.)

Præsumptio violenta, plena probatio.—(Strong presumption is full proof.)

Præsumptio violenta valet in lege. Jenk. Cent. 56.—(Strong presumption avails in law.)

Prætextu liciti non debet admitti illicitum. 10 Co. 88.—(Under pretext of legality, what is illegal ought not to be permitted.)

PRÆTOR FIDEI COMMISSARIUS, the Judge, at Rome, who enforced the performance of all fiduciary obligations.

PRAGMATIC SANCTION, a rescript or answer of the Sovereign, delivered by advice

of his council, to some college, order, or body of people, who consult him in relation to the affairs of the community. A similar answer given to an individual is simply called a *rescript*. *Civil Law Phrase*.

PRATIQUE [*prattica*, Lat.], a license for the master of a ship to traffic in the ports of Italy upon a certificate that the place whence he came is not annoyed with any infectious disease. *Encyc. Lond.*

PRAXIS, use, practice.

Praxis judicium est interpret legum. Hob. 96.
—(The practice of the Judges is the interpreter of the laws.)

PRAY IN AID, a petition made in a court of justice for the calling in of help from another that has an interest in the cause in question.

PREAMBLE, something previous, introduction, preface; also, the beginning of an act of Parliament, &c., serving to pourtray the intents of its framers, and the mischiefs to be remedied.

PREAUDIENCE, the right of being heard before another.

The preaudience of the bar is as follows :

1. The Queen's attorney general.
2. The Queen's solicitor general.
3. The Queen's premier serjeant (so constituted by special patent).
4. The Queen's ancient serjeant or the eldest amongst the Queen's serjeants.
5. The Queen's advocate general.
6. The Queen's serjeants.
7. The Queen's counsel with the Queen consort's attorney and solicitor.
8. Serjeants at law.
9. The recorder of London.
10. Advocates of the civil law.
11. Barristers.

PREBEND, a stipend granted in cathedral churches; also, but improperly, a prebendary.

A simple prebend is merely a revenue; a prebend, with dignity, has some jurisdiction attached to it.

The term prebend is generally confounded with canonicate; but there is a difference between them. The former is the stipend granted to an ecclesiastic in consideration of his officiating and serving in the church; whereas the canonicate is a mere title or spiritual quality which may exist independent of any stipend.

PREBENDA or **PROBANDA**, provisions, provinder.

PREBENDARY, a stipendiary of a cathedral.

PRECARIÆ or **PRECES**, day-works, which the tenants of certain manors are bound to give their lords in harvest time. *Magna precaria* was a great or general reaping-day.

PRECARIOUS, a kind of trade carried on between two nations at war, by the intervention of a third at peace with them.

PRECARIOUS JURISPRUDENCE, applied to a fund or stock, of which a person has not the full property, whereof he cannot dispose absolutely, and which is most of it borrowed. *Encyc. Lond.*

PRECARIOUS LOAN [*precarium*], a bailment at will.

PRECE PARTIUM, the continuance of a suit by consent of both parties.

PRECEDENCE or **PRECEDENCY**, the act or state of going before; adjustment of place.

The rules of precedence may be reduced to the following table, in which those marked * are entitled to the rank here allotted them, by 31 Hen. VIII., c. 10; marked † by 1 W. & M., c. 1; marked || by letters patent, 9, 10, & 14 Jac. 1, which see in *Seld. Tit. of Hon.* ii. 5, 46; marked ‡ by ancient usage and established custom. *Camden's Brit. tit. Ordines; Milles's Cat. of Hon.* 1610; and *Chamberlayne's Prest. St. of Eng.* b. iii., c. 3.

* The Queen's children and grand-children.

————— consort.

* ————— uncles.

* ————— nephews.

* Archbishop of Canterbury.

* Lord High Chancellor or Keeper, if a baron.

* Archbishop of York.

* Lord Treasurer.

* Lord President of the Council.

* Lord Privy Seal.

* Lord Great Chamberlain. But see Private Stat. 1 Geo. I., c. 3.

* Lord High Constable.

* Lord Marshal.

* Lord Admiral.

* Lord Steward of the Household.

* Lord Chamberlain of the Household.

* Dukes.

* Marquesses.

† Dukes' eldest sons.

* Earls.

† Marquesses' eldest sons.

† Dukes' younger sons.

* Viscounts.

† Earls' eldest sons.

† Marquesses younger sons.

* Secretary of State, if a bishop.

* The Bishop of London.

* ————— Durham.

* ————— Winchester.

* Bishops.

* Secretary of State, if a baron.

* Barons.

† Speaker of the House of Commons.

† Lords Commissioners of the Great Seal.

† Viscounts' eldest sons.

† Earls' younger sons.

† Barons' eldest sons.

|| Knights of the Garter.

|| Privy Counsellors.

|| Chancellor of the Exchequer.

|| Chancellor of the Duchy.

|| Chief Justice of the Queen's Bench.

|| Master of the Rolls.

|| Chief Justice of the Common Pleas.

|| Chief Baron of the Exchequer.

The three Vice Chancellors, 53 Geo. III., c. 24; 5 Vict., c. 5, § 25.

} if
barons.

} above
all
peers
of their
own
degree.

|| Judges and Barons of the Coif.
 Judges of the Court of Review in
 Bankruptcy, 5 & 6 Vict., c. 122, § 65.
 || Knights Bannerets, royal.
 || Viscounts' younger sons.
 || Barons' younger sons.
 || Baronets.
 || Knights Bannerets.
 † Knights of the Bath.
 † Knights Bachelors.
 || Baronets' eldest sons.
 || Knights' eldest sons.
 || Baronets' younger sons.
 || Knights' younger sons.
 † Colonels.
 † Serjeants at law.
 † Doctors, with whom, it is said, rank
 barristers.
 † Esquires.
 † Gentlemen.
 † Yeomen.
 † Tradesmen.
 † Artificers.
 † Labourers.

Married women and widows are entitled
 to the same rank among each other as their
 husbands would respectively have borne
 between themselves, except such rank is
 merely professional or official; and unmar-
 ried women to the same rank as their eldest
 brothers would bear among men during the
 lives of their fathers. 3 *Step. Com.* 13.

PRECEDENCE, *patent of*, a grant from the
 Crown to such barristers as it thinks proper
 to honor with that mark of distinction,
 whereby they are entitled to such rank and
 pre-audience as are assigned in their respec-
 tive patents.

PRECEDENT CONDITION, such as must
 happen or be performed before an estate
 can vest or be enlarged.

PRECEDENTS, authorities to follow in de-
 terminations of courts of justice; also, forms
 of proceedings to be followed in similar
 cases.

PRECEPT, a rule authoritatively given; a
 mandate; a command in writing by a justice
 of the peace or other officer, for bringing a
 person or record before him; the direction
 of a sheriff to the proper officer to proceed
 to the election of Members of Parliament;
 also, a provocation whereby one incites an-
 other to commit a felony. *Cowell.*

PRECES PRIMARIÆ or PRIMÆ, a right
 of the Crown to name to the first prebend
 that becomes vacant after the accession of
 the Sovereign, in every church of the em-
 pire. This right was exercised by the Crown
 of England in the reign of Edward I.

PRECIPE. See **PRÆCIPE**.

PRECLUDI NON (not to be barred), a for-
 mula of a replication to a plea in bar before
 4 Wm. IV.

PRECONIZATION [*præconium*, Lat., the
 office of a cryer], proclamation.

PRE-CONTRACT, a contract made before
 another, especially in relation to matrimony.

PREDIAL. See **PRÆDIAL**.

PRE-EMPTION, the first buying of a thing;

it was a privilege formerly allowed to the
 royal purveyor, but abolished by 12 *Car. II.*,
 c. 24.

PREFER, to apply; to move for; as, "to pre-
 fer for costs," is a phrase to apply for costs.

PREGNANCY, *plea of*, when a woman is
 capitally convicted, and pleads her preg-
 nancy, execution will be respited until she
 be delivered. See **ABORTION**.

PREGNANCY, an important question in legal
 medicine, since on its proper decision may
 depend the property, the honor, or the life
 of a woman.

In the ordinary practice of medicine, very
 little difficulty ever occurs in ascertaining
 the presence of pregnancy. A woman when
 she consults a physician is frank in her
 avowal of the symptoms present; and from
 her narrative an opinion sufficiently accu-
 rate can generally be formed. The reverse,
 however, takes place in legal medicine.
 Here pregnancy may be concealed by un-
 married women and even by married ones,
 under certain circumstances, to avoid dis-
 grace, and to enable them to destroy their
 offspring in its mature or immature state.
 It may be pretended to gratify the wishes of
 relatives, to deprive the legal successor of
 his just claims, to extort money, or to delay
 the execution of punishment.

Mahon has suggested a useful division of
 the signs of pregnancy, viz., those which
 affect the system generally, and those which
 affect the uterus.

The changes observed in the system from
 conception and pregnancy, are principally
 the following:—Increased irritability of tem-
 per; melancholy; a languid cast of counte-
 nance; nausea; heart-burn; loathing of
 food; vomiting in the morning, and in-
 creased salivary discharge; feverish heat,
 with emaciation and costiveness; occasionally
 depravity of appetite; a congestion in the
 head, which gives rise to spots on the face,
 to head-ache, and erratic pains in the face
 and teeth. The pressure of increasing preg-
 nancy occasions protrusion of the umbilicus,
 and sometimes varicose tumours, or anasar-
 cous swellings of the lower extremities.
 The breasts also enlarge, an areola, or
 brown circle, is observed around the nipples,
 and a secretion of lymph, composed of milk-
 and-water, takes place.

All of these do not occur in every preg-
 nancy, but many of them in most cases.

The changes that affect the uterus, are a
 suppression of the menses. These cease
 returning at their accustomed period.

An augmentation in the size of the womb.
 This is not perceptible until between the
 eighth and tenth weeks. At that time the
 foetus, with the surrounding membranes and
 the waters contained in them, so enlarge it,
 that it may be felt lower down in the vagina
 than formerly; nor does it ascend until it
 becomes so large as to arise out of the pelvis,
 and this is accomplished at about the fourth
 month. In the intermediate space an exa-
 mination *per vaginam* will discover the uterus

to be heavier and more resisting: and by raising it on the finger, this indication will be particularly remarked between the third and fourth months. In general, in the fourth month, the *fundus* of the *uterus* may be felt, especially in a thin person, above the anterior wall of the pelvis. The enlargement continues, and becomes visible during the fifth month: it arises to half-way between the *symphysis pubis* and the *umbilicus*, in the sixth month (seventh, according to some authors) it is as high as the *umbilicus*: at the seventh, half-way between the *umbilicus* and *scrobiculis cordis*, and at the eighth it has reached the latter, its highest elevation. A short time before delivery it somewhat subsides. About the middle of the pregnancy, or between the seventeenth and twenty-second weeks, the female feels the motion of the child, and this is called *quickening*. The *vagina* is also subject to alteration, as its glands throw out more mucus, and apparently prepare the parts for the passage of the foetus.

These, as now stated, are the signs of pregnancy usually enumerated. It would not, however, be doing justice to the subject, if it were supposed that all or most of them are the invariable attendants on pregnancy. Some may accompany diseases; others may be altogether wanting in a state of true pregnancy. *Beck's Med. Jurisp.* 124.

PRELATE, an ecclesiastic of the highest honor and dignity.

PRELECTOR, a reader; a lecturer.

PREMIER, a principal minister of state; the prime minister.

PREMISES, propositions antecedently supposed or proved; also, houses or lands; also, that part in the beginning of a deed, which sets forth the grantor or grantee, and the land or thing granted or conveyed.

PREMIUM, a consideration; something given to invite a loan or a bargain; the payment upon insurances, &c.

PREMUNIRE. See **PRÆMUNIRE**.

PRENDER [*prendre*, Fr.], a right to take anything before it is offered.

PRENDER DE BARON (to take a husband).

PREPENSE, forethought, preconceived, contrived beforehand.

PREROGATIVE, a peculiar or exclusive privilege. See **QUEEN**.

PREROGATIVE COURT, a court established for the trial of all testamentary causes, where the deceased has left *bona notabilia* in two different dioceses, in which case the probate of wills belongs to the archbishop of the province, by way of special prerogative. The two archbishops have each of them a prerogative court. The appeal is to the Privy Council. 2 & 3 *Wm. IV.*, c. 92.

PREROGATIVE WRITS, processes issued upon extraordinary occasions on proper cause shown. They are the writs of *procedendo*, *mandamus*, prohibition, *quo warranto*, *habeas corpus*, *certiorari*.

PRESBYTER, a priest, elder, or honorable person.

PRESBYTERIAN, a member of the Church of Scotland.

PRESBYTERIUM, a presbytery; that part of the church where divine offices are performed, applied to the choir or chancel, because it was the place appropriated to the bishop, priest, and other clergy; while the laity were confined to the body of the church. *Mon. Ang.* i. 243.

PRESCRIPTION [*præscribo*, Lat.], rules produced and authorized by long usage. It is known in the Roman law as *usucapio*.

It differs from *custom*, in that this is properly a *local* usage; but prescription is *personal*, attaching to a man and his ancestors, or those whose estate he has. Usage differs from both, for it may be either to persons or places. 2 *Nels. Abr.* 1277.

It applies to almost every kind of incorporeal hereditament.

At common law its following properties demand attention:—

1. Its title is always founded on the *actual* usage of enjoying the thing in question.

2. The enjoyment on which a prescription is founded, must have been *constant* and *peaceable*.

3. There must have been a usage from time immemorial, which has reference to the beginning of the reign of Richard I.: but a period of twenty years, or even less, will have the same effect if corroborated.

4. Every prescription must be certain.

5. The prescription must be laid either in a man, and those whose estates he has in certain lands, which is called prescribing in a *que* estate, or it must be in a man and his ancestors.

6. A prescription in a *que* estate must always be laid in him that is tenant of the fee.

7. A prescription cannot be for a thing which cannot be raised in grant.

8. What arises by matter of record cannot be prescribed for.

9. Where a man prescribes for anything in himself and his ancestors, it will descend only to the blood of that line of ancestors in whom he so prescribes; but if he prescribe for it in a *que* estate, it will follow the nature of that estate in which the prescription is laid, and be inheritable in the same manner, whether that were acquired by descent or purchase; for every accessory follows the nature of its principal.

Immemorial usage, however, is now dispensed with by 2 & 3 *Wm. IV.*, c. 71, which provides, with respect to rights of common and all other profits and benefits to be taken and enjoyed from or upon any land, with the exception of tithes, rents, and services, which remain, as at common law, that where there shall have been an enjoyment of them by any person claiming right thereto, without interruption for thirty years next before the commencement of any suit upon the subject, the prescriptive claim shall no longer be defeated (as it would have been before the act), by showing only that the enjoyment commenced at a period subse-

quent to the era of legal memory. But it may be defeated in any other way, in which it was defeasible before the act passed. The time during which the adverse party shall have been an infant, idiot, *non compos mentis*, *feme covert*, or tenant for life, or during which any action or suit shall have been pending which shall have been diligently prosecuted, until abated by death of parties, shall be excluded in the computation of this period of thirty years. But where there has been an enjoyment for as much as sixty years, the claim is to be absolute and indefeasible, except only by proof that such enjoyment took place under some deed, or written consent or agreement; while, on the other hand, if the period of enjoyment shall have been less than thirty years, it is to be wholly unavailable, even to raise the slightest presumption of right. He who prescribes under this act shall no longer be required in any case to claim as in right of the owner of the fee. See **WAYS**.

PRESCRIPTION, *corporations by*, those that have existed beyond the memory of man, and therefore are looked upon in law to be well created, such as the city of London.

PRESENTATION, the act of a patron offering his clerk to the bishop of the diocese, to be instituted in a church or benefice of his gift, which has become void. It differs from collation, which is the actual institution of a clerk to the benefice.

PRESENTATIVE ADVOWSON. See **ADVOWSON**.

PRESENTEE, one presented to a benefice.

PRESENTER, one that presents.

PRESENTMENT, generally taken, a very comprehensive term, including not only presentments, properly so called, but also inquisitions of office and indictments by a grand jury; properly speaking, the notice taken by a grand jury of any offence, from their own knowledge or observation, without any bill of indictment laid before them at the suit of the Crown; as the presentment of a nuisance, a libel, and the like, upon which the officer of the court must afterwards frame an indictment before the party presented can be put to answer it.

Presentments are also made in courts-leet and courts-baron, before the stewards.

PRESENTMENT OF BILLS OF EXCHANGE.

1. For *acceptance*. A bill drawn, payable after date, need not be presented for acceptance, but, if payable after sight, it is necessary to present or pay it away in some reasonable time. Foreign bills however, payable after sight, may be kept back, according to the convenience of the holder, for any period, or circulated to an indefinite extent; they are regarded as unlimited letters of credit. It is usual to leave a bill for acceptance twenty-four hours with the drawee during business hours. If the bill is refused acceptance, notice should be sent to the drawer and indorsers; and in the case of a foreign bill, it should be protested, and notice of the non-

acceptance and the protest sent by the same post, otherwise the drawer is exonerated.

2. For *payment*. Where the acceptance is general, the holder need not present it for payment at any particular place or time, for such omission will not exonerate the acceptor, but if the words "but not otherwise or elsewhere" are added, it is a special acceptance, and the non-presentation at the specified time and place exonerates all parties to the bill. Bills of exchange need not be presented to acceptors, *supra protest*, for honour, or to the referees in case of need, till the day following the day on which they become due, but if such day be a *dies non*, then upon the day following. 6 & 7 *Wm. IV.*, c. 58. Promissory notes must be presented for payment. The holder of a bank note has the whole of the banking-hours of the day after he receives it, to present or forward it for payment; if he retain it after that period, he cannot return it to the previous holder. The holder of a check is allowed one clear day to present or forward it for payment; after that time he holds it at his own risk.

PRESENTMENT IN COPYHOLDS. By 4 & 5 Vict., c. 35, it is provided, that every copy of a surrender, will, or codicil, delivered to the lord, steward, or deputy, and every grant and admission, shall be forthwith entered on the court rolls of the manor; and such entry shall be taken to be an entry in pursuance of a presentment; and it shall not be essential in any case to the validity of an admission, that a presentment should be made of the surrender or other matter, in consequence of which the admission was granted; with this proviso, however, that when, by the custom of any manor, the lord is authorized, by consent of the homage, to grant parcel of the waste to be held by copy, the consent of the homage assembled at a customary court, duly summoned, and held according to custom, shall still be necessary.

PRESIDENT, one placed with authority over others; one at the head of others; a governor.

PRESIDENT OF THE COUNCIL, the fourth great officer of state. He attends on the Sovereign, proposes business at the council table, and reports to the Sovereign the transactions there. 1 *Bl. Com.* 230.

PRESSING SEAMEN. See **IMPRESSING MEN**.

PREST, a duty in money that was to be paid by the sheriff on his account, in the exchequer, or for money left or remaining in his hands.

PRESTATION-MONEY, a sum of money paid by archdeacons yearly to their bishop; also purveyance.

PREST-MONEY, a payment which binds those who receive it.

PRESTIMONY, or **PRÆSTIMONIA**, a fund or revenue appropriated by the founder for the subsistence of a priest, without being erected into any title or benefice, chapel, prebend, or priory: and which is not subject

to the ordinary, but of which the patron and those who have a right from him are the collators. *Canon Law*.

PRESUMPTIO, intrusion, or the unlawful taking of anything. *Leg. Hen. I., c. 11.*

PRESUMPTION, a supposition, opinion, or belief previously formed. *Wood's Inst.* 599.

Presumptions are said to be either (1) *juris et de jure*, (2) or *juris*, or (3) *hominis vel judicis*. (1) The presumption *juris et de jure* is that where law or custom establishes the truth of any point, on a presumption that cannot be traversed on contrary evidence; thus a minor or infant under age, with guardians, is deprived of the power of acting without their consent, on a presumption of incapacity, which cannot be traversed. (2) The *presumptio juris* is a presumption established in law till the contrary be proved, as the property of goods is presumed to be in the possessor: every presumption of this kind must necessarily yield to contrary proof. (3) The *presumptio hominis vel judicis* is the conviction arising from the circumstances of any particular case.

PRESUMPTION OF SURVIVORSHIP. It is agitated when two or more individuals have died within a very short period of each other, and no witnesses have been present to notice the exact instant of dissolution. Accidents, also, such as fire, or a shipwreck, may destroy persons: and the disposition of their property will depend on ascertaining the survivorship of the one or the other. It is not to be supposed that medical science can solve the difficulty; but it may, in those extreme instances where no aid can be derived from facts, assist in laying down certain principles.

The presumption of survivorship of mother or child, when both die during delivery, is in favour of the mother.

As to the presumption of the survivorship of persons of different ages destroyed by a common accident, our law has no provision. *Fearne's Post. Works*, 38. For the laws and regulations of the continental nations, consult *Beck's Med. Jurisp.* 387.

PRESUMPTIVE EVIDENCE. See **CIRCUMSTANTIAL EVIDENCE**. 3 *Stark. Evid.* 927.

PRESUMPTIVE HEIR, one who, if the ancestor should die immediately, would, in the present circumstances of things, be his heir; but whose right of inheritance may be defeated by the contingency of some nearer heir being born.

PRETENSED RIGHT, where one is in possession of land, and another, who is out of possession, claims and sues for it; here the pretended right or title is said to be in him who so claims and sues for the same. *Mod. Cas.* 302.

PRETENSED TITLE STATUTE, 32 Hen. VIII., c. 2, § 2.

PRETER-LEGAL, not agreeable to law.

PRETERITION, the entire omission of a child's name in the father's will, which rendered it null: exheredation being allowed, but not preterition. *Roman Term*.

PRETIUM AFFECTIONIS, an imaginary value put on a thing by the fancy of the owner in his affection for it. *Bell*.

PRETIUM SEPULCHRI, mortuary: which see.

Pretium succedit in loco rei. 2 Buls. 321.— (The price succeeds in the place of the thing.)

PREVARICATION, a collusion between an informer and a defendant, in order to a feigned prosecution; also, any secret abuse committed in a public office or private commission.

PREVENTION [*prævenio*], the right which a superior person or officer has to lay hold of, claim, or transact, an affair prior to an inferior one, to whom otherwise it more immediately belongs, as when the Judges prevent subaltern ones. *Canon Law Term*.

PREVENTIVE SERVICE, armed police officers engaged to watch the coasts for the purpose of preventing smuggling and other illegal acts. It is sometimes termed the Coast Blockade Force.

PRICE, equivalent paid for anything.

PRICE CURRENT, a list or enumeration of the various articles of merchandize, with their prices, the duties (if any) payable thereon, when imported or exported, with the drawbacks occasionally allowed upon their exportation, &c.

Lists of this description are published periodically, generally once or twice a week, in most great commercial cities and towns.

PRIDE-GAVEL, a rent or tribute.

PRIEST, a minister of a church. 13 & 14 *Car. II., c. 4, § 14.*

PRIMÆ or PRIMARIÆ PRECES, a right of naming to the first prebend that becomes vacant in the church, after the accession of the Sovereign, by the Sovereign himself.

PRIMA FACIE EVIDENCE, that which not being inconsistent with the falsity of the hypothesis, nevertheless raises such a degree of probability in its favour that it must prevail if it be accredited by the jury, unless it be rebutted, or the contrary proved; *conclusive evidence*, on the other hand, is that which excludes, or at least tends to exclude, the possibility of the truth of any other hypothesis than the one attempted to be established. 1 *Stark. Evid.* 544.

PRIMA TONSURA (the first crop).

PRIMAGE, a certain allowance paid by the shipper or consignee of goods to the mariners and master of a vessel for loading the same.

In some places it is one penny in the pound, in others, sixpence for every pack or bale, or otherwise, according to the custom of the place.

PRIMATE, an archbishop; a chief ecclesiastic.

PRIMARIA ECCLESIA, the mother-church.

PRIMARY CONVEYANCES, original conveyances; they are—

1. Feoffments.
2. Grants.
3. Gifts.

4. Leases.
5. Exchanges.
6. Partitions.

PRIMER FINE. On suing out the writ or *præcipe*, called a writ of covenant, there was due to the Crown, by ancient prerogative, a *primer fine*, or a noble for every five marks of land sued for; that was, one-tenth of the annual value.

PRIMER SEISIN, a feudal burthen, only incident to the king's tenants *in capite*, and not to those who held of inferior or mesne lords. It was a right which the king had, when any of his tenants *in capite* died seised of a knight's fee, to receive of the heir (provided he were of full age) one whole year's profits of the land, if they were in immediate possession; and half a year's profits, if the lands were in reversion, expectant on an estate for life. It was incident to socage tenants *in capite*, as well as those who held by knight-service. It is, however, abolished by 12 Car. II., c. 24.

PRIMER SERJEANT, the Queen's first serjeant at law.

PRIMICERIUS, the first of any degree of men.

PRIMITIÆ, the first fruits which were presented to the gods by the ancients; also, the products of a living the first year after avoidance, which formerly were taken by the Crown.

PRIMO BENEFICIO, the first benefice in the Sovereign's gift.

Primo excutienda est verbi vis, ne sermonis vitio obstruetur oratio, sive lex sine argumentis. Co. Lit. 68.—(The force of a word is to be especially examined, lest by the fault of the diction the sentence is destroyed or the law be without arguments.)

PRIMOGENITURE, seniority, eldership, state of being first-born; the title of an elder son in right of his birth.

The right of primogeniture was not acknowledged by the Romans; sons and daughters all shared equally the property of their parents. In France, until the reign of Capet, even the kingdom was subject to division amongst the sons. In England, the custom of gavelkind is almost the only instance of opposition to this rule of heritage.

PRINCE [*princeps*, Lat.], a sovereign, a chief ruler, ruler of whatever sex. "Queen Elizabeth, a *prince* admirable above her sex for her princely virtues." Camden.

Princeps et respublica ex justâ causâ possunt rem meam auferre. 12 Co. 13.—(The prince and the republic, in a just cause, cannot take away my property.)

Princeps mavult domesticos milites quam stipendarios bellicis apponere casibus. Co. Lit. 69.—(A prince, in warlike chances, had rather employ domestic than foreign troops.)

PRINCE OF WALES, the heir-apparent to the Crown; he is created Earl of Chester, and being the Sovereign's eldest son, he is, by inheritance, Duke of Cornwall (during the life of the Sovereign), without any new creation.

PRINCES OF THE ROYAL BLOOD, the younger sons and daughters of the Sovereign, and other branches of the royal family, who are not in the immediate line of succession.

PRINCIPAL, a head, a chief; also, a capital sum of money placed out at interest; also, an heir-loom, mortuary, or corse-present.

PRINCIPAL AND ACCESSARY. 1. *Principals* in offences are of two degrees; (a) of the first degree, as the actual perpetrators of the crime; (b) of the second degree, those who are present, aiding and abetting the fact to be done.

2. *Accessaries* are not the chief actors in the offence, nor present at its performance, but are in some way concerned therein, either before or after the fact committed. See **ACCESSARY**.

PRINCIPAL AND AGENT, he who being competent and *sui juris* to do any act for his own benefit or on his own account, employs another person to do it, is called the principal, constituent, or employer, and he who is thus employed is called the agent, attorney, proxy, or delegate of the principal, constituent, or employer. The relation thus created between the parties is termed an agency. The power thus delegated is called in law an authority. And the act, when performed, is often designated as an act of agency or procuration. *Story on Agency*, 2.

PRINCIPAL CHALLENGE, a species of challenge to jurors for suspicion of partiality. It takes place where the cause assigned carries with it *prima facie* evident marks of suspicion, either of malice or of favour.

PRINCIPAL AND SURETY. See **GUARANTY**.

Principalis debet semper excuti antiquam perennatur ad fidei jussores. 2 Inst. 19.—(The principal should always be examined before he come to the *jussores fidei*.)

Principia data sequuntur concomitantia.—(Given principles follow their concomitants.)

Principia probant, non probantur. 3 Co. 40.—(Principles prove they are not proved.)

Principiis obsta.—(Oppose principles.)

Principiorum non est ratio. 2 Bula. 239.—(Of principles there is no rule.)

Principis beneficium debet esse mansurum. Jenk. Cent. 138.—(The benefit of a prince ought to be lasting.)

Principis patrimonium semper favorabile fuit in omni republicâ. 2 Inst. 272.—(The patrimony of a prince was always favourable in every commonwealth.)

Principium est potissima pars cujusque rei. 10 Co. 49.—(The principle of anything is its most powerful part.)

PRINTING, the art or process of impressing letters or words; typography. The statutes relating to this subject are 39 Geo. III., c. 79, amended by 51 Geo. III., c. 65, and 2 & 3 Vict., c. 12.

PRIOR, chief of a convent, next in dignity to an abbot.

Prior tempore potior jure.—(He who is first in time is preferred in law.)

PRIORITY, an antiquity of tenure in comparison of another less ancient ; also, that which is before another in order of time.

PRISAGE or **BUTLERAGE**, a custom whereby the prince challenges out of every hark laden with wine, two tons of wine at his own price, abolished by 51 Geo. III., c. 15 ; also, that share which belongs to the Sovereign or admiral out of such merchandizes as are taken at sea, by way of lawful prize, which is usually a tenth part.

PRISO, a prisoner taken in war.

PRISON, a place of confinement for the safe custody of persons, in order to their answering any action, civil or criminal ; a gaol.

PRISONER, one who is confined in hold. A prisoner on *matter of record* is he who, being present in court, is by the court committed to prison ; a prisoner on *arrest* is one apprehended by a sheriff or other lawful officer.

Pris vitiis laboravimus nunc legibus. 4 Inst. 76.—(We laboured first with vices, now with laws.)

PRIVATE ACT OF PARLIAMENT. See **ACT OF PARLIAMENT.**

PRIVATEERS. See **LETTER OF MARQUE.**

PRIVATION, a taking away or withdrawing ; an abbreviation, by aphaeresis, of the word *deprivation*.

Privatio præsupponit habitum. 2 Rol. Rep. 419.—(A deprivation pre-supposes a possession.)

Privatum commodum publico cedit. Jenk. Cent. 223.—(Private good yields to public.)

Privatum incommodum publico bono pensatur. Jenk. Cent. 85.—(Private loss is compensated by public good.)

PRIVEMENT ENSIENT, pregnancy in its earlier stages.

PRIVIES, those who are partakers or have an interest in any action or thing, or any relation to another. They are of five kinds :

1. Privies of blood, such as the heir to the ancestor.

2. Privies in representation, as executors, administrators to the deceased.

3. Privies in estate, between grantor and grantee, lessor and lessee, &c.

4. Privies in respect of contract, are personal privies, and extend only to the persons of the lessor and lessee.

5. Privies, in respect of estate and contract, as where the lessee assigns his interest, but the contract between the lessor and lessee continues, the lessor not having accepted of the assignee.

PRIVILEGE, an exemption from some duty, burthen, or attendance, to which certain persons are entitled, from a supposition of law, that the stations they fill, or the offices they are engaged in, are such as require all their care ; that, therefore, without this indulgence, it would be impracticable to execute such offices to that advantage which the public good requires.

It is either *personal*, which is granted to a person either against or beyond the course of the common law in other cases, as privi-

lege of Parliament, or *real*, which is granted to a place, as to the universities, that none of either may be called to Westminster Hall on any contract made within their own precincts, or prosecuted in other courts.

PRIVILEGE, *writ of*, a process to enforce or maintain a privilege.

PRIVILEGED DEBTS, debts which an executor may pay in preference to all others, such as sick-bed and funeral expenses, mourning, servants' wages, &c.

PRIVILEGED VILLENAGE, villein socage : which see.

PRIVILEGIA or **LAWS**, *ex post facto*, laws which are enacted after an action is committed, and the legislature then, for the first time, declares it to have been a crime, and inflicts a punishment upon the person who has committed it.

Of such laws, the great Roman orator thus speaks :—*Vetant leges sacras, vetant duodecim tabulas, leges privatis hominibus irrogari ; id enim est privilegium. Nemo unquam tulit, nihil est crudelius, nihil perniciosius, nihil quod minus hæc civitas ferre possit.*

Privilegia quæ recera sunt in præjudicium reipublicæ, magis tamen habent speciosa frontispicia, et boni publici prætextum, quam bonæ et legales concessionibus : sed prætextu liciti non debet admitti illicitum. 11 Co. 88.

—(Privileges which are truly in prejudice of public good, have however a more specious front and pretext of public good, than good and legal grants : but, under pretext of legality, that which is illegal ought not to be admitted.)

PRIVILEGIUM CLERICALE, the benefit of clergy, which is abolished by 7 & 8 Geo. IV., c. 28.

PRIVILEGIUM, *property propter*, a qualified property in animals *feræ naturæ*, i. e., a privilege of hunting, taking, and killing them, in exclusion of others.

Privilegium est beneficium personale et extinguitur cum personâ. 3 Buls. 8.—(A privilege is a personal benefit, and dies with the person.)

Privilegium est quasi privata lex. 2 Buls. 189.

—(Privilege is, as it were, a private law.)

Privilegium non valet contra rempublicam. Bac. Max. 25.—(A privilege avails not against public good.)

PRIVITY, relationship, friendly connection, admitted to participation of knowledge. See **PRIVIES.**

PRIVY [*privé*, Fr.], partaking or having an interest in any action or thing.

PRIVY COUNCIL, the council of state held by the Sovereign with her councillors to concert matters for the public service, and for the honor and safety of the realm.

The royal will is the sole constituent of a privy councillor ; and this also regulates their number, which is indefinite. It is summoned on a warning of forty-four hours, and never held without the presence of a Secretary of State ; the junior delivers his opinion first, and the Sovereign, if present,

last; it is dissolved six months after the demise of the Crown, unless sooner determined by the successor.

PRIVY COUNCILLORS, the Sovereign's advisers. They are made by the royal nomination, without either patent or grant; and on taking the necessary oaths, they become immediately privy councillors during the life of the Sovereign that chooses them, but subject to removal at the royal discretion.

Their duties are: 1st, to advise the Sovereign according to the best of their cunning and discretion; 2d, to advise for the Sovereign's honor and good of the public, without partiality, through affection, love, meed, doubt, or dread; to keep the Sovereign's counsel secret; 4th, to avoid corruption; 5th, to help and strengthen the execution of what shall be there resolved; 6th, to withstand all persons who would attempt the contrary; and, 7th, to observe, keep, and do all that a true and good councillor ought to do to his Sovereign. *2 Step. Com. 481.*

PRIVY COUNCIL, *judicial committee of the.* See **JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.**

PRIVY PURSE, the income set apart for the Sovereign's personal use. See **CIVIL LIST.**

PRIVY SEAL, a seal which the Sovereign uses to such grants or things which pass the Great Seal. As to the officers connected with this, see *2 Wm. IV., c. 49.* See **GREAT SEAL.**

PRIVY SIGNET, the Sovereign's privy seal, which is always in the custody of the principal Secretary of State. Grants or letters patent are sealed with it.

PRIVY TITHES, small tithes.

PRIVY VERDICT, when the Judge has left or adjourned the court, and the jury being agreed, in order to be delivered from their confinement, obtain leave to give their verdict privily to the Judge out of court; but if the Judge have adjourned the court to his own lodgings, and there receives the verdict, it is a public and not a private verdict. Privy verdicts are now wholly disused. *3 Bl. Com. 377.*

PRIZE COMMISSION. See **ADMIRALTY COURT.**

PRO [for or in respect of], in the grant of an annuity *pro consilio*, showing the cause of a grant amounts to a condition; but in a feoffment or lease for life, &c., it is the consideration, and does not amount to a condition; for the state of the land by the feoffment is executed, and the grant of the annuity is executory. *Plowd. 412.*

PROAVUS, a great grandfather.

Probandi necessitas incumbit illi qui agit.—(The necessity of proving lies upon him who brings the charge.)

PROBATE, official proof, especially that of a will.

This is done by the executor before the ordinary, and is either in *common form*, which is only upon the executor's own oath

before the ordinary or his surrogate, or *per testes*, in more solemn form of law, in case the validity of the will be disputed. When the will is so proved, the original must be deposited in the registry of the ordinary, and a copy thereof on parchment is made out under the seal of the ordinary, and delivered to the executors, together with a certificate of its having been proved before him, all which together is usually styled the *probate*. *2 Step. Com. 237.*

PROBATION, proof, evidence, testimony.

PROBATIONER, one who is upon trial.

Probationes debent esse evidentes, scil. perspicuæ et faciles intelligi. Co. Lit. 283.—(Proofs ought to be evident, *to wit*, perspicuous and easily understood.)

PROBATOR, an examiner; an accuser or approver, or one who undertakes to prove a crime charged upon another.

PROBATUM EST (it is tried or proved).

PROCEDENDO, a writ which issues out of the common law jurisdiction of the Court of Chancery, when Judges of any subordinate court delay the parties, for that they will not give judgment either on the one side or on the other, when they ought so to do. In such a case, a writ of *procedendo ad judicium* shall be awarded, commanding the inferior court in the Queen's name to proceed to give judgment, but without specifying any particular judgment; for that, if erroneous, may be set aside by writ of error or false judgment; and upon further neglect or refusal, the Judges of the inferior court may be punished for their contempt by writ of attachment, returnable in the courts at Westminster. It also lies where an action has been removed from an inferior to a superior court by *habeas corpus*, *certiorari*, or any like writ, and it appears to the superior court that it was removed on insufficient grounds. A suit once so remanded, shall never afterwards be removed before judgment in any court whatever. *21 Jac. 1, c. 23.*

PROCEDENDO ON AID PRAYER. If one pray in aid of the Crown in a real action, and aid be granted, it shall be awarded that he sue to the Sovereign in Chancery, and the justices in the Common Pleas shall stay until this writ of *procedendo de loquela* come to them. So also on a personal action. *N. N. B. 342.*

PROCEEDS, the sum, amount, or value of goods, &c., sold or converted into money.

PROCESS. It is largely taken for all the proceedings in any action or prosecution, real or personal, civil or criminal, from the beginning to the end; strictly, the summons by which one is cited into a court, because it is the beginning or principal part thereof by which the rest is directed. *Brit. 138.*

At *common law* the superior courts at Westminster, in personal actions, differed greatly before the Uniformity of Process Act, in their modes of process, and even the same court admitted a considerable variety of methods, according to the circumstances of the case.

31 Eliz., c. 2, and these proclamations were endorsed on the record. Abolished by 3 & 4 Wm. IV., c. 74.

PROCLAMATOR, an officer of the Court of Common Pleas.

PRO CONFESSO, where a bill is filed in Chancery, to which the defendant does not answer, the matter contained in the bill shall be taken as if it were confessed by defendant. See **CONFESSO**, **BILL TAKEN PRO**.

PROCONSULES, justices in eyre. *Cowell*.

PROCTOR [*procurator*, Lat.], a manager of another person's affairs; also, a species of constable in our universities.

Proctors in the ecclesiastical courts discharge duties similar to those of solicitors and attornies in other courts. In order to entitle a person to be admitted a proctor to practise in the Court of Arches, it is required that he shall have served a clerkship of seven years, under articles, with one of the thirty-four senior proctors, who must be of five years' standing, and who, by the rules of the court, is prohibited from taking a second clerk until the first shall have served five years; except in the event of the death of a proctor to whom a clerk may have been articulated before the completion of his clerkship. In this case any other of the thirty-four senior proctors may take such clerk for the remainder of the term, although he himself may at the same time have a clerk of less than five years' standing. Before a clerk is permitted to be articulated, he is required to produce a certificate of his having made reasonable progress in classical education.

When the term of seven years is completed, the party is admitted a notary by a faculty from the Archbishop of Canterbury; a petition is then presented to his grace, accompanied by a certificate, signed by three advocates and three proctors, that the party applying to be admitted has served as articulated clerk to a proctor of the court for the full term of seven years. If this certificate be approved, the archbishop issues his fiat, and a commission is directed to the Dean of the Arches, by whom the party is admitted, under the title of a supernumerary, with similar ceremonies to those observed on the admission of an advocate. They appear in court in black stuff gowns.

PROCTORS OF THE CLERGY, they who are chosen and appointed to appear for cathedral or other collegiate churches; as also for the common clergy of every diocese to sit in the convocation-house in the time of Parliament.

PROCURATION, money which parish priests pay yearly to the bishop or archdeacon, *ratione visitationis*; these are also called *proxies*, and it is said that there are three sorts—*ratione visitationis*, *consuetudinis*, *et pacti*. *Hardr.* 180.

Bills of exchange may be drawn, accepted, or endorsed by procuration, *i.e.*, by an agent who has an authority for such a purpose.

PROCURATION FEE, a sum of money taken by scriveners on effecting loans of money.

A solicitor for a mortgagee may take procuration money on a loan by way of mortgage, so that no more than five shillings per cent. be taken. If more be taken, the party is liable to forfeit 20*l.*, and shall suffer imprisonment for half a year. 12 *Ann.*, st. 2, c. 16, § 2.

Procuratio est exhibitio sumptuum necessarium facta praelatis, qui dioceses peregrinab, ecclesias subjectas visitant. Dav. 1.—(Procuration is the providing necessities for the bishops, who, in travelling through their dioceses, visit the churches subject to them.)

Procuracionem adversus nulla est prescriptio. Dav. 6.—(There is no prescription against procuration.)

PROCURATOR, one who has a charge committed to him by any person.

PROCURATORES ECCLESIAE PAROCHIALIS, churchwardens. *Paroch. Antiq.* 562.

PROCURATORIUM, the instrument by which any person or community did constitute or delegate their proctor to represent them in any court or cause.

PROCURATORY OF RESIGNATION, a proceeding in the law of Scotland, by which a vassal authorizes the fee to be returned to his superior, either to remain the property of the superior, in which case it is said to be a resignation *ad remanentiam*, or for the purpose of the superior's giving out the fee to a new vassal or to the former vassal and a new series of heirs, which is termed a resignation in favour. It is analogous to the surrender of copyholds in England.

PRODES HOMINES, the barons of the realm.

PRODITION, treason, treachery.

PRODITOR, a traitor. *Obsolete*.

PRODITORIE (treasonably).

Præbenda dicitur a præbendo, quia præbent auxilium episcopo. 4 Co. 75.—(A prebendary is called from *præbendo*, because he gives assistance to the bishop.)

PROFANENESS, irreverence of what is sacred.

PROFER [*proferer*, Fr.], to produce; an offer or endeavour to proceed in an action; also, the time appointed for the accounts of officers in the Exchequer, which was twice a year. 3 & 4 Wm. IV., c. 99, § 2.

PROFERT IN CURIA (he produces in court), where either party alleges any deed, he is generally obliged, by a rule of pleading, to make *profert* of such deed; that is, to produce it in court simultaneously with the pleading in which it is alleged. This, in the days of oral pleading, was of course an actual production in court. Since then, it consists of a formal allegation that he shows the deed in court, it being, in fact, retained in his own custody. *Step. Plead.* 72. See **OYER**.

PROFESSION, calling, vocation, known employment; particularly used of divinity, physic, and law.

PROFIT AND LOSS, the gain or loss arising

from goods bought or sold, the former of which, in book-keeping, is placed on the creditor's side, the latter on the debtor's side. *Net profit* is the gain made by selling goods at a price beyond what they cost the seller, and beyond all costs and charges.

PROFITS, that which land yields in the shape of rent, issues, or other advantages: also, gain, pecuniary advantage.

PROFITS MESNE. See **MESNE PROFITS**.

PROHIBITION, a writ to forbid any court to proceed in any cause there depending, on the suggestion that the cognizance thereof belongs not to such court. It is a remedy provided by the common law against the encroachment of jurisdiction.

This writ issues not only out of the Queen's Bench, but also the Courts of Chancery, Exchequer, and Common Pleas, to inferior courts of common law, or to the courts of the counties palatine, to the county courts or courts baron, or to the courts christian or ecclesiastical, the university courts, the Court of Chivalry or the Court of Admiralty, when they concern themselves with any matter not within their jurisdiction, or where they transgress the bounds prescribed to them by the laws of England. If either the Judge or party proceed after such prohibition, an attachment may be had against them for contempt, at the discretion of the court that awarded it; and an action will lie against them, to repair the party injured in damages.

The proceedings to obtain this writ are the following:—

The party aggrieved in the court below, applies to the superior court, setting forth the nature and cause of his complaint, in being drawn, *ad aliud examen*, by a jurisdiction or manner of process disallowed by the laws of the kingdom, and this used formerly to be done by filing, as of record, what was called a suggestion, containing a formal statement of the facts; but now by 1 Win. IV., c. 21, it is provided, that it shall not be necessary to file any suggestion, but that an application for this writ may be made by affidavits only, that is, in the way of an ordinary motion, by a rule to show cause; upon which, if the matter alleged appear to the court to be sufficient, the writ immediately issues, commanding the Judge not to hold, and the party not to prosecute the plea. But sometimes the point may be too nice and doubtful to be decided merely upon a motion, and then for the more solemn determination of the question, the party applying for the writ is directed by the court to declare in prohibition, that is, to deliver a declaration against the other, setting forth in a concise manner so much of the proceeding in the court below, as may be necessary to show the ground of the application, praying that a writ may issue; and this used formerly to be connected with an allegation, that the party sued on behalf of the Crown, as well as of himself, and of a supposition or fiction (which was not traversable), that the defendant had proceeded in the suit

below, notwithstanding a writ of prohibition. But by the statute just quoted, the use of these forms is now expressly abolished; and it is provided, that to this declaration the party defendant may demur, or plead such matters by way of traverse or otherwise, as may be proper to show that the writ ought not to issue, and conclude by praying that such writ may not issue; and judgment shall be given that the writ do or do not issue, as justice may require; and the party in whose favour judgment shall be given, whether on nonsuit, verdict, demurrer, or otherwise, shall be entitled to the costs attending the application and subsequent proceedings, and have judgment to recover the same; and in case a verdict shall be given for the party plaintiff in such declaration, it shall be lawful for the jury to assess damages, for which judgment shall also be given; but such assessment shall not be necessary to entitle the plaintiff to costs. 3 *Step. Com.* 685.

Prohibetur ne quis faciat in suo quod nocere possit alieno: et sic utere tuo ut alienum non laedas. 9 Co. 59.—(It is prohibited for any to do that to his own property which may injure another's; and so, use your own so as you do not hurt another's.)

PROHIBITIO DE VASTO, DIRECTA PARTI, a judicial writ which used to be addressed to a tenant, prohibiting him from waste, pending suit. *Reg. Jud.* 21; *Moor*, 917.

PRO INDIVISO (as undivided), the possession or occupation of lands or tenements belonging to two or more persons, whereof none knows his several portion; as coparceners before partition.

PROLES, progeny.

Prolem ante matrimonium natam, ita ut post, legitimam, lex civilis et succedere facit in hæreditate parentum: sed prolem, quam matrimonium non parit succedere non sinit lex Anglorum. Fort. c. 39.—(The civil law permits both the offspring born before, and the offspring born after marriage, to be the heirs of their parents; but the law of the Angles does not suffer the offspring not produced by the marriage to succeed.)

PROLOCUTOR, the foreman; the speaker of a convocation.

PROLOCUTOR OF THE CONVOCATION HOUSE, an officer chosen by ecclesiastical persons publicly assembled in convocation by virtue of the Sovereign's writ; at every Parliament there are two prolocutors, one of the higher house of convocation, the other of the lower house; the latter of whom is chosen by the lower house, and presented to the bishops of the higher house as their *prolocutor*, that is, the person by whom the lower house of convocation intend to deliver their resolutions to the lower house, and have their own house especially ordered and governed; his office is to cause the clerk to call the names of such as are of that house, when he sees cause, to read all things propounded, gather suffrages, &c.

PROMISE, a voluntary engagement for the

performance or non-performance of some particular thing, which may be made either by deed or without deed, when it is said to be by parol: *promise* is usually applied when the engagement is by parol only, for a promise by deed is technically called a *covenant*.

PROMISSORY NOTE, a written engagement by one person to pay another person, therein named, absolutely and unconditionally, a certain sum of money at a time specified therein. It is generally negotiable by being paid to order or to the bearer, for they are rarely limited to be payable only to a particular person named therein. The person who makes the note is called the maker, and the person to whom it is payable is called the payee, and when it is negotiated by indorsement by the payee, he is called the indorser, and the person to whom the note is transferred is the indorsee. *Story's Com. on Prom. Notes*, 1.

PROMOTERS, those who in popular and penal actions prosecute offenders in their names and the Queen's, and are entitled to part of the fines and penalties for their pains.

These, among the Romans, were called *quadruplicatores* or *delatores* (*pro Lat. iv. 48*); in English also, informers.

Sir Thomas Smith observes, that promoters belong chiefly to the Exchequer and Queen's Bench. My Lord Coke calls them *turpidum hominum genus*. 5 Inst. 191.

PROMULGATION, publication; open exhibition.

PROOF, evidence, testimony, convincing token, means of conviction.

Bracton says, there is *probatio duplex* by witnesses *viva voce*, and *probatio mortua* by deeds, writings, &c. See **EVIDENCE**.

PRO PARTIBUS LIBERANDIS, an ancient writ for partition of lands between coheirs. *Reg. Orig.* 316.

PROPER FEUDS, the original and genuine feuds held by pure military service.

PROPERTY, the highest right a man can have to anything, being used for that right which one has to lands or tenements, goods or chattels, which does not depend on another's courtesy.

Property is of three sorts; absolute, qualified, and possessory.

Property in real property is acquired by entry, descent, or conveyance; and in personal, by many ways, but most usually by gift, or bargain and sale.

PROPERTY-TAX ACTS. See **INCOME-TAX ACTS**.

PROPHECIES. See **FALSE PROPHECIES**.

Propinquior excludit propinquum; propinquus remotum; et remotus remotiorem. Co. Lit. 10.—(He who is nearer excludes him who is near; he who is near, him who is remote; he who is remote, him who is remoter.)

PROPORTUM, intent or meaning. *Correll*.

PROPOSAL, a statement in writing of some special matter submitted to the consideration of one of the Masters of the Court of

Chancery, pursuant to an order made upon an application *ex parte*, or a decretal order of the court. It is either for maintenance of an infant, appointment of a guardian, placing a ward of the court at the university, or in the army, or apprentice to a trade; for the appointment of a receiver, the establishment of a charity, &c.

Propositio indefinita æquipollet universali.—(An indefinite proposition is equal to a general one.)

Pro possessore habetur qui dolo injuridice deit possidere. Office of Exec. 166.—(He is counted a possessor, who by fraud or injury discontinues to possess.)

PROPRIETARY, he who has a property in anything.

Proprietas verborum est salus proprietatum. Jenk. Cent. 16.—(Propriety of words is the health of property.)

PROPRIETATE PROBANDA, *de*, a writ addressed to a sheriff to try by an inquest in whom certain property, previous to a distress, subsisted. *Black. L.* 316.

Proprietates verborum observanda sunt. Jenk. Cent. 136.—(The properties of words are to be observed.)

Propter jus sanguinis duplicatum, tam ex parte patris, quam ex parte matris, dicitur heres propinquior soror, quam frater de alio usu. 3 Co. 41.—(On account of the double right of blood, as well on the part of the father as the mother, the sister is called the next heir, rather than the brother by another wife.) But see **CANONS OF INHERITANCE**.

PRO RATA (in proportion).

PRO RE NATA (for the existing occasion).

PROROGATION, prolonging or putting off to another day.

A prorogation is the continuance of the Parliament from one session to another, as an adjournment is continuation of the session from day to day.

PROSECUTION, a proceeding either by way of information or indictment, in the criminal courts, in order to put an offender upon his trial.

PROSTERNATION [*prosterno*, Lat.], act of casting down.

PRO TANTO (for so much).

Protectio trahit subjectionem, et subjectio protectionem. Co. Lit. 65.—(Protection begets subjection, subjection protection.)

PROTECTION, defence, shelter from evil, especially from being arrested; also, an immunity granted by the Crown to a certain person to be free from suits at law for a certain time, and for some reasonable cause; it is a branch of the royal prerogative. They are now very rarely, if ever, resorted to.

PROTECTIONIBUS, *de*, the statute 33 Edw. I., stat. 1, allowing a challenge to be entered against a protection, &c.

PROTECTOR OF THE SETTLEMENT, the person appointed by the Fines and Recoveries' Act, in substitution of the old tenant to the *præcipe*, whose concurrence in barring estates tail in remainder is required in

order to preserve, under certain modifications, the controul of the tenant for life over the remainder-man.

It is therefore enacted, by § 22, that if, at the time when there shall be a tenant in tail under a settlement, there shall be under the same settlement any estate for years determinable on a life, or any greater estate (not being an estate for years) prior to the estate tail, then the owner of the prior or first estate, or who would have been so if no absolute disposition thereof had been made, shall be the protector of the settlement, and shall, for the purposes of the act, be deemed the owner of such prior estate, although the same may have been charged or encumbered, and although all the rents be exhausted or required for the payment of the encumbrances on such prior estate, and although such prior estate may have been absolutely disposed of by the owner, or by his bankruptcy or insolvency, or by any other act or default of such owner. An estate by the courtesy in respect of the estate tail, or of any prior estate created by the same settlement, is to be deemed a prior estate; and a resulting use or trust to or for the settlor is to be deemed an estate under the same settlement.

Provisions are then made for making each owner of an undivided share the protector of such share, so that if there are two persons tenants in tail, each may alone acquire the fee in his moiety under the statute, and for making the husband and wife the protector of a settlement, where she, if single, would have been the protector in respect of a prior estate, unless her estate shall, by the settlement, have been settled, or agreed to be settled, to her separate use, in which case she alone is to be the protector. Except in the case of a lease, which is afterwards provided for, where an estate is limited by a settlement by way of confirmation, or where the settlement merely has the effect of restoring the estate, such estate is, so far as regards the protector of the settlement, to be deemed an estate subsisting under such settlement.

But it is provided (§ 26), that a lease at a rent created or confirmed by a settlement, shall not make the owner of it the protector, nor shall any woman in respect of her dower, nor any bare trustee, heir, executor, administrator, or assign, be the protector (§ 28).

The statute protector may be excluded by the settlor, who, by the settlement creating the entail, may appoint not more than three persons *in esse*, and not being aliens, to be protector, and either for the whole or any part of the period; and he may, by means of a power to be inserted in such settlement, perpetuate, during the whole or any part of the period, the protectorship in any person or persons (not being aliens) whom the donee shall by deed appoint in the place of any who should die or by deed relinquish the office, but the number of old and new not to exceed three. The deed of appointment

is required to be enrolled in the Court of Chancery within six calendar months after its execution.

The act preserves to a bare trustee, under any existing settlement, who would have been the proper person to make the tenant to the *præcipe*, the right, as the protector of such settlement, during the continuance of the estate, conferring on him the right to make the tenant to the *præcipe*.

The act substitutes the Lord Chancellor in the place of a protector who shall be a lunatic; and the Court of Chancery in the place of a protector who shall be convicted of treason or felony; or of a protector, not being the owner of a prior estate, who shall be an infant, or where it shall be uncertain whether he be living or dead. The Court of Chancery is also substituted during the continuance of the prior estate, where the settlor declares that the person who, as owner of a prior estate under such settlement, would be entitled to be protector, shall not be such protector, and does not appoint any protector in his stead. And, also, in every other case where there shall be under a settlement, a prior estate sufficient to qualify a protector, and there shall happen to be no protector, the Court of Chancery, during the continuance of the prior estate, is to be the protector.

No actual tenant in tail (§ 34), not having the remainder or reversion in fee immediately expectant on his estate tail, under a settlement where there is a protector, can dispose of the estate to the full extent authorized by the act, without the consent of the protector; but he may, without such consent, dispose of the estate against all persons who, by force of any estate tail which shall be vested in or might be or have been claimed by him, shall claim the lands.

The discretion of the protector of the settlement is absolute and uncontrollable, even by a court of equity; and any agreement entered into by him to withhold his consent, is void, nor can his giving his consent be deemed a breach of trust, for he is not to be deemed a trustee of the power. A consent once given cannot be revoked. A married woman, being a protector, may consent as a *feme sole* (§ 45).

PROTEST, a solemn declaration of opinion, commonly against something. Also, a notification written upon a foreign bill of exchange for non-acceptance, or non-payment by a notary, notice of which must be sent the same day to the drawer and indorsers, with a copy of the bill, if they are abroad, but merely a notice is sufficient, if they are in England. All protests made in England must be on a stamp, otherwise they cannot be given in evidence. 55 Geo. III., c. 184; 2 & 3 Wm. IV. c. 98.

In the case of foreign bills of exchange, when the drawee cannot be found, or refuses to accept, it is usual for some friend of the drawer or endorser, after the bill has been protested for non-acceptance, to accept

the bill for the honor of his friends, parties to the bill; but he should be cautious, and make every enquiry as to the reasons of the drawee's refusal, since, in case of forgery or other vital defect in the bill, he cannot come upon any of the parties to the bill. 10 B. & C. 4. No such rule is applicable to promissory notes.

Each peer has a right, by leave of the House of Lords, when a vote passes contrary to his sentiments, to enter his dissent on the journals of the house, with the reasons for such dissent, which is usually styled his protest.

Also, a writing attested by a justice of the peace or consul, drawn by a master of a vessel, stating the severity of the voyage by which the ship has suffered, and showing that the damage was not occasioned by his misconduct or neglect.

PROTESTANDO, a word made use of to avoid double pleading in actions; it prevents the party that makes it from being concluded by the plea he is about to make, that issue cannot be joined upon it; and it is also a form of pleading, where one will not directly affirm or deny anything alleged by another or himself. But by rule of court, Hil., 4 Wm. IV., "no protestation shall hereafter be made in any pleadings, but either party shall be entitled to the same advantage in that or other actions, as if a protestation had been made."

As to protestation in equity pleadings, see *Story's Eq. Plead.* 669.

PROTESTANT, he who adhered to the doctrine of Luther; because, in 1529, they protested against a decree of the Emperor Charles X., and of the diet of Spire, and declared that they appealed to a general council. The name is now applied indiscriminately to all the sects, of whatever denomination, who have revolted from the Roman see. *Encyc. Lond.*

PROTESTATION. See **PROTESTANDO**.

PROTHONOTARIES, officers in the courts of Common Pleas and Exchequer, who were superseded by the Masters. 7 Wm. IV., 1 Vict., c. 30.

PROTOCOL [*πρωτος*, Gk., and *κόλλη*], the original copy of any writing.

An original is styled the *protocol* or *scriptura matrix*. *Encyc. Lond.*

It is usually applied to writings of a diplomatic character.

PROUT PATET PER RECORDUM (even as it appears by the record). The omission of the words "*per recordum*," is but form, and so it was twice adjudged, viz., in *Hancocke v. Prowd*, and *Clegat v. Banbury*, 2 Sid. 16; 1 Saund. 337, b, c, (4).

PROVER, an approver.

PROVINCE, the circuit of an archbishop's jurisdiction; a county; an out country governed by a deputy or lieutenant.

PROVINCIAL CONSTITUTIONS, the decrees of provincial synods held under divers archbishops of Canterbury, from Stephen Langton, in the reign of Henry III.,

to Henry Chichele, in the reign of Henry V., and adopted also by the province of York in the reign of Henry VI. *Lynd. Provinciale*.

PROVINCIAL COURTS, the several archiepiscopal courts in the two ecclesiastical provinces of England.

PROVING A WILL IN CHANCERY, where lands are devised by will away from the heir, the devisee, in order to perpetuate the testimony of the witnesses to such will, exhibits a bill in Chancery against the heir, and sets forth the will *verbatim* therein, suggesting that the heir is induced to dispute its validity; and then, the defendant having answered, they proceed to issue as in other cases, and examine the witnesses to the will; after which the cause is at an end, without proceeding to any decree, no relief being prayed by the bill; but the heir is entitled to his costs, even though he contests the will. 3 Bl. Com. 450.

PROVISIONAL ASSIGNEES, those who were formerly appointed under fiat in bankruptcy in the country to take charge of bankrupts' estate, &c., until the creditors' assignees were appointed. They are now superseded by the official assignees. Provisional committee is one appointed for a temporary occasion.

PROVISIONES, those acts of Parliament which were passed to curb the arbitrary power of the Crown.

PROVISO, stipulation, caution, a condition inserted in any deed, on the performance whereof the validity of the deed depends.

The terms *proviso* and *condition* are synonymous, and signify some quality annexed to a real estate by virtue of which it may be defeated, enlarged, or created upon an uncertain event. Such qualities annexed to personal contracts and agreements are generally called conditions. A proviso or condition differs from a covenant in this, that the former is in the words of, and binding upon, both parties, whereas the latter is in the words of the grantor only. It is a rule in provisos, that where a proviso is, that the lessee shall perform or not perform a thing, and no penalty is annexed to it, that is a condition, otherwise it would be void; but if a penalty be annexed, it is a covenant. *Wood's Land. and Tent.*, 92, 239.

Proviso est providere presentia et futura non praterita. 2 Co. 72.—(A proviso is to provide for present and future, not past.)

PROVISO, trial by. In all cases where the plaintiff, after issue joined, does not proceed to trial, where, by the course and practice of the court, he ought to have done so, the defendant may, if he wish, have the action tried by proviso; that is, he may give the plaintiff notice of trial, make up the *Nisi Prius* record, carry it down and enter it with the marshal, and proceed to the trial as in ordinary cases. This, however, can be done only in cases where the plaintiff has been guilty of some *laches* or default after issue joined, except in replevin, prohibition,

quare impedit, and error in fact: in which cases both parties being plaintiffs, the defendant may make up the *Nisi Prius* record, and thereupon proceed to trial, although no laches or default be imputable to the plaintiff. The court have also allowed a defendant to carry down the record of an issue, directed to the Court of Chancery to trial by proviso, upon its being suggested to them that the plaintiff wished to delay the cause. By rule of court of H., 2 Wm. IV., r. 71, "no trial by proviso shall be allowed in the same term in which the default of the plaintiff has been made, and no rule for a trial by proviso shall be necessary:" and by rule H., 2 Wm. IV., r. 70, "no entry of the issue shall be deemed necessary to entitle a defendant to move for judgment as in case of a nonsuit, or to take the cause down by proviso." If both the plaintiff and defendant happen to carry down the record at the same time, the trial shall be by the plaintiff's record, if he enter it with the marshal; but, if he omit to do so, the defendant may proceed upon the record brought down by him. A defendant seldom tries by proviso, as the better course is to move for judgment as in case of a nonsuit. *Chit. Arch. Prac.* 1065.

PROVISOR, a purveyor; one who sued to the court of Rome for a provision.

PROVISORS, *statutes against*, 25 Edw. III., st. 6; 27 Edw. III., st. 1, c. 1; 68 Edw. III., st. 1, c. 4, and st. 2, cc. 1, 2, 3, 4.

PROVOST, the principal magistrate of a royal borough in Scotland; a governing officer of an university or college.

PROVOST MARSHAL, an officer of the royal navy, who had the charge of prisoners taken at sea, and was sometimes used for a like purpose on land. 13 Car. II., c. 9.

PROXENETA or **PROXINETES**, a kind of broker or agent.

All contracts and agreements respecting marriage (commonly called marriage brokerage contracts), by which a party engages to give another a compensation, if he will negotiate an advantageous marriage for him, are void, as being injurious to or subversive of the public interest. But the civil law does not seem to have held contracts of this sort in such severe rehnke; for it allowed *proxinetæ* or matchmakers, to receive a reward for their services to a limited extent. And the period is comparatively modern in which a different doctrine was engrafted into the common law, and received the high sanction of the House of Lords. All marriage brokerage contracts are utterly void as against public policy, so much so, that they are deemed incapable of confirmation, and even money paid under them may be recovered back in a court of equity. 1 *Story's Eq. Jurisp.* 214.

PROXIES, annual payments made by the parochial clergy to the bishop, &c., on visitation.

PROXY, a person appointed in the stead of another to represent him.

Prudenter agit qui præcepto legis obtemperat.

5 Co. 49.—(He acts prudently, who obeys the command of the law.)

PRYK, a kind of service of tenure. Blount says it signifies an old-fashioned spur with one point only, which the tenants, holding land by this tenure, was to find for the king.

PUBLICANS, persons authorised by license to retail beer, spirits, or wines. Under the term publicans, are comprised innkeepers, hotel-keepers, alehouse-keepers, keepers of wine vaults, &c. An inn differs from an alehouse in this—that the former is a place intended for the lodging, as well as the entertainment of guests, whereas the latter is intended for their entertainment only. If, however, ale or beer be commonly sold in an inn, as is almost invariably the case, it also is an alehouse, and if travellers be furnished with beds, lodged, and entertained in an alehouse, it also is an inn. It is not material to the character of an innkeeper that he should have any sign over his door; it is sufficient that he makes it his business to entertain passengers and travellers, providing them with lodgings and other accommodations.

Licensing of publicans.—The provisions with respect to the licensing of public houses are embodied in the 9 Geo. IV., c. 61.

Duties of innkeepers.—They are bound by law to receive guests coming to their inns; and they are also bound to protect their property when there. They have no option to reject or refuse a guest unless their house be already full, or they are able to assign some other reasonable and sufficient cause.

Neither can they impose unreasonable terms on such as frequent their houses; if they do, they may be fined, and their inns indicted and suppressed. An innkeeper who has stables attached to his premises, may be compelled to receive a horse, although the owner does not reside in his house; but he cannot, under such circumstances, be compelled to receive a trunk or other dead thing. By the Annual Mutiny Act, constables, or in their default, justices of the peace, may quarter soldiers in inns, livery stables, alehouses, &c., under the conditions and regulations set forth in the statute.

Responsibility of innkeepers.—An innkeeper is bound to keep safely whatever things his guests deposit in his inn, or in his custody as innkeeper; and he is civilly liable for all losses except those arising from irresistible force, or what is usually termed the act of God or the Queen's enemies. *McCulloch's Comm. Dict.*

PUBLICATION, divulcation; proclamation. Also, showing the depositions taken in a Chancery suit openly, and giving out copies of them, in order to the hearing of a cause. Publication is to pass, without rule or order, on the expiration of two months after the filing of the replication, unless such time expire in the long vacation, or is enlarged by order. If the two months after the filing of the replication expire in the long vacation,

publication is to pass on the second day of the ensuing Michaelmas Term, unless the time is enlarged by order. If the time is enlarged by order, publication is to pass without rule or order on the expiration of the enlarged time, unless the enlarged time expires in the long vacation, in which case publication is to pass, without rule or order, on the second day of the ensuing Michaelmas Term, unless the time is further enlarged by order. *Orders, 8th May, 1845, clauses 111, 112, 113.*

Publication of a will is no longer necessary by 1 Vict., c. 26.

PUBERTY [*pubertas*], the age of fourteen in men, and twelve in women; when they are held fit for and capable of contracting marriage.

PSEUDOGRAPH, false writing.

PUBLIC ACCOUNTS, the expenditure of the nation. They are audited by commissioners, appointed under 2 Wm. IV., c. 26. See 2 & 3 Wm. IV., c. 99; 2 & 3 Wm. IV., c. 104; and 4 & 5 Wm. IV., c. 15.

PUBLIC ACT OF PARLIAMENT. See **ACT OF PARLIAMENT.**

PUBLIC APPOINTMENTS, *sale of*, the sale or transfer of these is generally contrary to the policy of the law, and prohibited in most cases by the express enactment of the legislature. 5 & 6 Edward VI., c. 16; 49 Geo. III., c. 126.

PUBLIC FUNDS. See **FUNDS.**

PUBLIC HOUSES, places of public resort, mostly for purposes of drinking.

The statutes relating to them are of two kinds; the first having in view the subject of *revenue*, for which see 6 Geo. IV., c. 81; the other of *police*, that is, the proper regulation of these places, and the prevention of abuses to which they are naturally liable; the principal one now in force is the 9 Geo. IV., c. 61. And see 11 Geo. IV. and 1 Wm. IV., c. 64; 4 & 5 Wm. IV., c. 85; and 3 & 4 Vict., c. 61.

PUBLIC OFFICER, a person appointed by joint-stock bank companies, &c., to sue and be sued on behalf of the company.

PUBLIC PROSECUTOR, the Queen, in whose name criminals are prosecuted, because all offences are said to be against the Queen's peace, her Crown, and dignity.

PUBLIC STORES. See **STORES.**

PUBLIC VERDICT. See **PRIVY VERDICT.**

PUBLIC WAYS, the highways.

PUBLIC WORKS' ACT, 4 & 5 Wm. IV., c. 72.

PUBLICIST, a writer on the laws of nations.

Pueri sunt de sanguine parentum, sed pater et mater non sunt de sanguine puerorum. 3 Co. 40.—(Children are of the blood of their parents, but the father and mother are not of the blood of the children.)

PUERITIA, the age from seven to fourteen.

PUFFER, one who attends a sale by auction for the purpose of raising the price and exciting the eagerness of the bidders.

A bidder may be privately appointed by the owner, in order to prevent the estate or pro-

perty from being sold at an undervalue; but where a person is employed, not with a defensive precaution, with a view to prevent a sale at an undervalue, but to screw up the price; this will be deemed a fraud. A vendor can only appoint one bidder. If the particulars or advertisements state that the property is to be sold *without reserve*, the sale would be void against a purchaser, if any person were employed as a puffer, and actually bid at the sale. 1 Sugd. V. & P. 27.

PUIS DARREIN CONTINUANCE (since the last continuance), **PLEA.** If any matter of defence arise after the defendant has pleaded, and before the jury have actually delivered their verdict, the defendant may, within eight days after such matter of defence arose, unless a further time be allowed by the court or a judge, avail himself of it by a plea, styled a plea *puis darrein continuance*, before the abolition of the entry of continuance, but now more properly denominated a plea to the further maintenance of the action. It cannot be pleaded after a demurrer or verdict. The plea must be accompanied by an affidavit, that the matter thereof arose within eight days next before the pleading of such plea, unless the court or a Judge shall otherwise order. If this plea be put in at the assizes, or at *Nisi Prius*, the Judge has no discretion to refuse it, and no further proceedings can be had on it there; but it must be certified on the back of the record at *Nisi Prius*, and returned to the court above; after the record is thus returned, the plaintiff may reply or demur to the plea, and then proceed as in ordinary cases. If the plaintiff demur, the court may order it to be set down for argument for the first paper day in term, so that the plaintiff can have judgment as soon as he would have had if it had not been pleaded. The defendant can only plead one of these pleas.

A plea of this kind is always pleaded, by way of substitution for the former plea, in which no proceeding is afterwards had. The plaintiff may always, after this plea, discontinue, without payment of costs. *Chit. Arch. Prac.* 299.

PUISNE [*puisné*, Fr.], junior, inferior, lower in rank.

The several Judges and Barons of the common law courts at Westminster are called *puisné*.

PULSATOR [*pulsare*, Lat., to accuse], the plaintiff or actor.

PUND-BRECH, pound-breach.

PUNDIT, an interpreter of the Hindoo law.

PUNISHMENT, the penalty for transgressing the law.

PUPIL, a ward; one under the care of a guardian.

PUPILARITY, non-age.

PUR AUTRE VIE, *tenant*, the least estate of freehold which the law acknowledges, for an estate for the life of another is not so great as an estate for one's own life. See 1 Vict., c. 26, § 6; and **SPECIAL OCCUPANCY.**

PURCHASE [*perquisitio* or *conquestus*, according to the feudists], in its popular sense, an acquisition of land, obtained by way of bargain and sale, for money or some other valuable consideration; in its legal acceptation, an acquisition of land in any lawful manner, other than by descent, or the mere act of law, and includes escheat, occupancy, prescription, forfeiture, and alienation. See 3 & 4 Wm. IV., c. 106, § 1.

PURCHASER OF A NOTE OR BILL, the person to whom a promissory note or bill of exchange is endorsed, who then becomes the endorsee or holder, and consequently the payee.

PURE VILLENAGE, where a man holds, upon terms of doing whatsoever is commanded of him, neither knows in the evening what is to be done in the morning, and is always bound to an uncertain service.

PURGATION, the clearing a person's self of a crime of which he is publicly suspected and accused before a Judge. It was either *canonical*, which was prescribed by the canon law, the form whereof, used in the spiritual court, is, that the person suspected take his oath that he is clear of the facts objected against him, and bring his honest neighbours with him to make oath that they believe he swears truly, or *vulgar*, which was by fire or water ordeal, or by combat. They are all abolished.

PURIFICATIO BEATÆ MARIÆ VIRGINIS, the purification of the Blessed Virgin Mary, which falls on the second day of February in every year.

PURITANS. - See **DISSENTERS**.

PURLIEU [*pourallie*, Fr.], ground on the border of a forest, precinct, boundary.

PURLIEU-MEN, those who have ground within the purlieu, and being able to dispend 40s. a-year freehold, are licensed to hunt in their own purlieus. *Manw. For. Laws*, 151.

PURLOINING, theft.

PURPARTY, share, part in a division.

PURPRESTURE. See **POURPRESTURE**.

Purprestura vel porprestura, dicitur, quando aliquid super dominum regem injustè occupatur, ut in dominiciis regiis, vel in viis publicis obstructis, vel in aquis publicis transversis à recto cursu, vel quando aliquis in civitate super regiam plateam aliquid ædificando occupaverit. Et generaliter, quotiens aliquid sit ad nocumentum regii, tementi vel regie viæ, vel civitatis, placitum inde ad coronam domini regis pertinet. Glanv. l. 9, c. 11 — (A purpresture is so called, when anything is occupied against the Sovereign unjustly: as in the royal domains, or when anything is placed as an obstruction on the high roads, or in the public rivers, against the right course, or when any person in a town has erected a building on the royal highway. And generally as often as there is anything to the injury of the royal domain, or royal road or state, the plea thence belongs to the Crown.)

PURPRISE [*purprism*, Law Lat.], a close or enclosure; as also the whole compass of a manor.

PURSUANCE, prosecution; process.

PURSUE, to prosecute.

PURSUIVANT. See **POURSUIVANT**.

PURUS IDIOTA (a congenital idiot).

PURVEYANCE. See **POURVEYANCE**.

PURVIEW, proviso, providing clause; also, that part of a statute which begins with, "Be it enacted," &c.

PUTAGE, prostitution on a woman's part.

PUTATIVE, supposed, reputed.

PUTURE, a custom claimed by keepers in forests, and sometimes by bailiffs of hundreds, to take man's meat, horse meat, and dog's meat, of the tenants and inhabitants within the perambulation of the forest, hundred, &c. The land subject to this custom is called *terra putura*.

Others who call it *pulture*, explain it as a demand in general; and derive it from the monks, who, before they were admitted *pulsabant*, that is, knocked at the gates for several days together.

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QUADRAGESIMA, the time of lent, because consisting of forty days.

QUADRAGESIMALS, offerings formerly made, on mid-lent Sunday, to the mother church.

QUADRANLATA TERRÆ, a quarter of an acre, now called a rood.

QUADRIENNIUM UTILE, the term of four years allowed to a minor after his majority, in which he may by suit or action endeavour to annul any deed to his prejudice granted during his minority. *Scotch Phrase*.

QUADIPARTITE, having four parties; divided into four parts.

QUADRUPLATOIRES, informers among the Romans, who, if their information were followed by conviction, had the fourth part of the confiscated goods for their trouble.

Quæ ad unum finem loquuta sunt, non debent ad alium detorqueri. 4 Co. 14.—(Those things which are spoken to one end, ought not to be perverted to another.)

Quæ coherent personæ à personâ separari nequeunt. Jenk. Cent. 28.—(Things which belong to the person ought not to be separated from the person.)

Quæ communi legi derogant strictè interpretantur. Jenk. Cent. 221.—(Things derogating from the common law are to be strictly interpreted.)

Quæ contra rationem juris introducta sunt, non debent trahi in consequentiam. 12 Co. 75.—(Things introduced contrary to the rule of law, ought not to be drawn into a precedent.)

Quæcunque intra rationem legis inteniuntur, intra legem ipsam esse judicantur. 2 Inst. 689.—(What things soever appear within the reason of a law, are to be considered within the law itself.)

Quæ dubitationis causâ tollendæ inseruntur communem legem non lædunt. Co. Lit. 205.

(Things which are inserted for the purpose of removing doubt, hurt not the common law.)

QUÆ EST EADEM (which is the same), a phrase used in pleading to supply the want of a traverse.

Quæ incontinenti vel certò fiunt in esse videntur. Co. Lit. 236.—(Things which are done directly and certainly, appear already in existence.)

Quæ in curiâ regis acta sunt ritè agi præsumuntur. 3 Buls. 43.—(Things done in the king's court are presumed to be rightly done.)

Quæ in partes dividi nequeunt solida, à singulis præstantur. 6 Co. 1.—(Solids, which cannot be divided into parts, are exhibited by singulars.)

Quæ inter alios acta sunt nemini nocere debent, sed prodesse possunt. Ibid.—(Transactions among strangers ought to hurt no man, but should benefit.)

Quæ legi communi derogant strictè interpretantur. Jenk. Cent. 29.—(Those things which are derogatory to the common law, are to be strictly interpreted.)

Quæ legi communi derogant non sunt trahenda in exemplum.—(Things derogatory to the common law, are not to be drawn into a precedent.)

Quælibet concessio domini regis capi debet strictè contra dominum regem, quando potest intelligi duabus viis. 3 Leon. 243.—(Every grant of the lord king, ought to be taken strictly against the lord king, when it can be understood in two ways.)

Quælibet concessio fortissimè contra donatorem interpretanda est. Co. Lit. 183.—(Every grant is to be most strongly taken against the grantor.)

Quælibet hæreditas naturaliter quidem ad hæredes hæreditabiliter descendit, nunquam quidem naturaliter ascendit: descendit itaque jus quasi ponderosum, quod cadens deorsum recta linea vel transversali, et nunquam reascendit ed viâ quâ descendit post mortem antecessorum; à latere tamen ascendit aliovi propter defectum hæredum inferius provenientium. Co. Lit. 11.—(Every inheritance naturally descends to the heirs in the manner of an inheritance, it never naturally ascends. The right therefore descends, as being heavy, and falling downward in a right or transverse line, and it never ascends in the way it descends, after the death of ancestors, yet laterally it may ascend to a certain one in defect of heirs coming beneath.) But see CANONS OF INHERITANCE.

Quælibet jurisdictio cancellos suos habet. Jenk. Cent. 137.—(Every jurisdiction has its own bounds.)

Quælibet narratio super brevi locari debet in com. in quo breve emanavit.—(Every count upon the writ ought to be laid in the county in which the writ arose.)

Quælibet pardonatio debet capi secundum intentionem regis, et non ad deceptionem regis. 3 Buls. 14.—(Every pardon ought to be taken according to the intention of the king, and not to the deception of the king.)

Quælibet pœna corporalis, quamvis minima, major est quælibet pœnâ pecuniariâ. 3 Inst. 220.—(Every corporal punishment, although the very least, is greater than any pecuniary punishment.)

Quæ mala sunt inchoata in principio viâ bono peragantur exitu. 4 Co. 2.—(Things bad in the commencement seldom achieve a good end.)

Quæ movent ad mortem sunt deodanda. 3 Inst. 57.—(Things which move to death are deodands.) Deodands are abolished by 9 & 10 Vict., c. 93.

Quæ non valeant singula, juncta juvant. 3 Buls. 132.—(Things which do not avail separate, joined avail.)

Quæ pertinent ad coronam et dignitatem regis et ad regnum, in causis et placitis rerum temporalium, in foro seculari. Co. Lit. 96.—(Things which relate to the Crown and dignity of the king and to the realm, belong to the secular courts, as being causes and pleas of a temporal nature.)

QUÆ PLURA, a writ which may lay where an inquisition had been taken by an escheator of lands, &c., of which a man died seised, and all the land was supposed not to be found by the office or inquisition, this writ was therefore to inquire of what more lands or tenements the party died seised. Reg. Orig. 293. Rendered useless by 12 Car. II., c. 24.

Quæ præter consuetudinem et morem majorum fiunt, neque placent, neque recta videntur. 4 Co. 78.—(Things which are done contrary to the custom and usage of our ancestors, neither please nor appear right.)

Quæras de dubiis, legem bene discere sis.—(Inquire into doubtful points if you wish to understand the law well.)

QUÆRENS NON INVENIT PLEGIUM (the plaintiff has not found pledge), a return made by a sheriff upon certain writs directed to him with this clause: *Si A. fecerit B. securum de damore suo proseguendo, &c.* F. N. B. 38.

Quærere dat sapere quæ sunt legitima verâ. Lit. § 443.—(To inquire into, is the way to know what things are really true.)

Quære de dubiis, quia per rationes pervenitur ad legitimam rationem. Lit. § 377.—(Inquire into doubtful points, because by reasoning we arrive at right reason.)

Quæ rerum naturâ prohibentur, nullâ lege confirmata sunt. Finch, 74.—(Things which are prohibited in the nature of things, are confirmed by no law.)

Quæritur ut crescant tot magnæ columnæ legis. In promptâ causâ est, crescit in orbe delict. 3 Co. 82.—(It is questioned, how so many books of law increase. The reason is plain: crime increases in the world.)

Quæ sunt minoris culpæ sunt majoris infamie. Co. Lit. 6.—(Things which are of the smaller guilt, are of the greater infamy.)

QUÆSTA, an indulgence or remission of penance, exposed to sale by the pope.

QUÆSTIONARI, those who carried *quæsta* about from door to door.

QUÆSTUS, that estate or those effects which a man has by acquisition or purchase, in contradistinction to *hæreditas*, which is what he has by descent.

QUAKER, the name of a member of a religious society, more correctly denominated friends. The nature of their creed was for a long time misrepresented and unknown; but since they have laid it fully before the public, they have enjoyed from the various parties of the Christian church a high degree of consideration and respect. They were once called *seekers*, and the term *quakers* arose out of the frequent exhortations to "tremble at the name of the Lord," given by this sect to their followers. Indeed, a story of this kind is related, viz., that Fox having given this command to a justice of peace, was by him derided and called a quaker. It seems likely, however, since the term was in very general use, that it took its origin from the earnest and trembling voice and action of all the preachers of the sect. But there is another conjecture on the subject, which has obtained the support of Malone. This would refer quaker to *quacker*, and rests on the following lines written by Sir G. Wharton, in 1660:—

Let's tear our ribbons, burn our richer laces,

Wear russet, and contrive bewitched faces;

With *thee* and *thou* let us go *quack* awhile.

As to their solemn affirmations, see 3 & 4 Wm. IV., c. 49; and 6 & 7 Vict., c. 85.

QUALE JUS, a judicial writ which was brought where a man of religion had judgment to recover land before execution was made of the judgment; it went forth to the escheator between judgment and execution, to inquire what *right* the religious person had to recover, or whether the judgment were obtained by the collusion of the parties, to the intent that the lord might not be defrauded. *Reg. Jnd.* 8.

QUALIFICATION, that which makes any person or thing fit for anything; also, abatement, diminution.

QUALIFIED, applied to a person enabled to hold two benefices.

QUALIFIED FEE, a base fee: which see.

QUALIFIED OATH, a circumstantial oath.

QUALIFIED PROPERTY, an ownership of a special and limited kind, and that either in reference to the peculiar circumstances of the matter, which is not capable of being under the absolute dominion of any proprietor, as in the case of animals *feræ naturæ*, or on account of the peculiar circumstances of the owner, when the thing itself is very capable of absolute ownership, as in the case of a bailment.

Qualitas quæ inesse debet, faciliè præsumitur. *Jur. Civ.*—(A quality which ought to form a part is easily presumed.)

QUAM DIU SE BENE GESSERIT, a clause frequent in letters patent or grants of offices, to secure them so long as the person to whom they are granted shall not be guilty of abusing the same.

Quam longum debet esse rationabile tempus, non definitur in lege, sed pendet ex discretione justiciariorum. *Co. Lit.* 56.—(How long reasonable time ought to be, is not defined by law, but depends upon the discretion of the Judges.)

Quamvis aliquid per se non sit malum, tamen si sit mali exempli, non est faciendum. 2 *Inst.* 564.—(Although a thing in itself may not be bad, yet, if it hold out a bad example, it is not to be done.)

Quamvis lex generaliter loquitur, restringenda tamen est, ut cessante ratione et ipsa cessat; cum enim ratio sit anima vigorque ipsius legis, non videtur legislator id sensisse quod ratione careat etsi verborum generalitas primâ facie aliter suadeat. 4 *Inst.* 330.—(Although the law speaks generally, it is to be restrained, when the reason on which it is grounded fails; for as the reason of a law is its very soul and gist, it cannot be meant by the legislature to be contrary to that reason, although at first sight the generality of its wording would induce us to think so.)

Quam rationabilis debet esse finis, non definitur, sed omnibus circumstantiis inspectis pendet ex justiciariorum discretione. 11 *Co.* 44.—(What a reasonable termination ought to be, is not defined, but is left to the discretion of the Judges, all the circumstances being considered.)

Quando aliquid mandatur, mandatur et omne per quod pervenitur ad illud. 5 *Rep.* 116.—(When any thing is commanded, every thing by which it can be accomplished is also commanded.)

Quando aliquid prohibetur ex directo prohibetur et per obliquum. *Co. Lit.* 223.—(When any thing is prohibited directly, it is prohibited also indirectly.)

Quando aliquid prohibetur, prohibetur omne per quod devenitur ad illud. 2 *Inst.* 48.—(When anything is prohibited, everything relating to it is prohibited.)

Quando charta continet generalem clausulam, posteaque descendit ad verba specialia quæ clausulæ generali sunt consentanea, interpretanda est charta secundum verba specialia. 8 *Co.* 154.—(When a charter contains a general clause, and afterwards descends to special words, which are consentaneous to the general clause, the charter is to be interpreted according to the special words.)

Quando de una et eadem re, duo onerabiles existunt, unus, pro insufficientiâ alterius, de integro onerabitur. 2 *Inst.* 277.—(When there are two persons liable for one and the same thing, one for the other's default will be charged for the whole.)

Quando dispositio referri potest ad duas res, ita quod secundum relationem unam vitatur et secundum alteram, utilis sit, tum facienda est relatio ad illam ut valeat dispositio. 6 *Co.* 76.—(When the intention may refer to two things, so that by one of which it would be vitiated, and by the other it would be preserved, then the relation is to be referred to that by which the intention may avail.)

Quando diversi considerantur actus ad aliquem

statum perficiendum, plus respicit lex actum originalem. 10 Co. 49.—(When different acts, to the forming of an estate, are considered, the law respects more the original act.)

Quando duo jura concurrunt in und personā, æquum est ac si essent in diversis. 4 Co. 118.—(When two rights concur in one person, it is the same as if they were in separate persons.)

Quando jus domini regis et subditi concurrunt jus regis præferri debet. 9 Co. 129.—(When the right of king and of subject concur, the king's right is to be preferred.)

Quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest. 5 Co. 47.—(When the law gives a man anything, it gives him the means of obtaining it.)

Quando lex aliquid alicui concedit, omnia incidentia tacite conceduntur. 2 Inst. 326.—(When the law gives anything to any one, all incidents are tacitly given.)

Quando lex est specialis, ratio autem generalis, generaliter lex est intelligenda. 2 Inst. 83.—(When the law is special, but its reason general, the law is to be understood generally.)

Quando mulier nobilis nupserit ignobili desinit esse nobilem nisi nobilitas natua fuit. 4 Co. 118.—(When a noble woman marries a man not noble, she ceases to be noble, unless her nobility was born with her.)

Quando plus fit quam fieri debet videtur etiam illud fieri quod faciendum est. 8 Co. 85.—(When a man performs more than ought to be performed, he nevertheless is considered to have performed that which ought to have been performed.)

Quando verba statuti sunt specialia, ratio autem generalis, generaliter statutum est intelligendum. 10 Co. 101.—(When the words of a statute are special, but the reason general, the statute is to be understood generally.)

QUANTITY OF ESTATE. As to the division and analysed arrangement of estates, see **ESTATE.**

QUANTUM MERUIT (so much as he deserved), an action on the case, express or implied, grounded on a promise to pay the plaintiff for doing anything so much as he deserved or merited. Abolished in effect by the rules H. T., 1 Wm. IV.

Quantum tenens domino ex homagio, tantum dominus tenenti ex dominio debet præter solum reverentiam; mutuū debet esse domini et homagii fidelitatis connexio. Co. Lit. 64.—(As much as the tenant by his homage owes to his lord, so much is the lord, by his lordship, indebted to the tenant, except the reverence alone, for the tie of dominion and faith ought to be mutual.)

QUANTUM VALEBAT (so much as it was worth), where goods, &c., are delivered at no certain price, or to be paid for them as much as they are worth in general, then *quantum valebat* lay, and the plaintiff was to aver them to be worth so much: so where the law obliges one to furnish another with

goods or provisions, as an innkeeper, his guests, &c. Abolished by the rules H. T., 1 Wm. IV.

QUARANTINE or **QUARENTAINE**, the widow's. It is provided by Magna Charta, that the widow shall not be distrained to marry afresh, if she choose to live without a husband, but shall not however marry against the consent of the lord; and further, that nothing shall be taken for assignment of the widow's dower, but that she shall remain in her husband's capital mansion-house for forty days after his death, during which time her dower shall be assigned. These forty days are called the widow's *quarantine*. 1 Step. Com. 253.

It likewise signifies a quantity of ground containing forty perches. *Leg. Hen. I.*, c. 16.

A regulation by which all communication with individuals, ships, or goods, arriving from places infected with the plague, or other contagious disease, or supposed to be peculiarly liable to such infection, is interdicted for a certain definite period. The term is derived from the Italian *quaranta*, forty; it being generally supposed, that if no infectious disease break out within forty days or six weeks no danger need be apprehended from the free admission of the individuals under quarantine. During this period, too, all the goods, clothes, &c., that might be supposed capable of retaining the infection are subjected to a process of purification.

The notion that the plague was imported from the East into Europe seems to have prevailed in all ages. But it would appear that the Venetians were the first who endeavoured to guard against its introduction from abroad, by obliging ships and individuals from suspected places to perform quarantine. The regulations upon this subject were, it is most probable, issued for the first time in 1484. *Beckman Hist. of Invent.*, vol. ii., art. "*Quarantine*." They have since been gradually adopted in every other country. Their introduction into England was comparatively late. Various preventive regulations had been previously enacted, but quarantine was not systematically enforced till after the alarm occasioned by the dreadful plague at Marseilles in 1720. The regulations then adopted were made conformably to the suggestions of the celebrated Dr. Mead, in his famous "*Discourse concerning Pestilential Contagion*."

The existing quarantine regulations are embodied in the Act 6 Geo. IV., c. 78, and the different orders in council issued under its authority. These orders specify what vessels are liable to perform quarantine; the places at which it is to be performed; and the various formalities and regulations to be complied with. The publication in the Gazette of any order in council with respect to quarantine is deemed sufficient notice to all concerned, and no excuse of ignorance is admitted for any infringement of the regulations. To obviate, as far as possible, any

foundation for such plea, it is ordered that vessels clearing out for any port or place with respect to which there shall be at the time any order in council subjecting vessels from it to quarantine, are to be furnished with an abstract of the quarantine regulations. *McCulloch's Comm. Dict.*

QUARE CLAUSUM FREGIT (wherefore he broke the clause), a plea in trespass which operates as a denial of the defendant having committed the alleged trespass in the place mentioned; but if it be intended to deny the plaintiff's possession, or right of possession, it must be traversed specially, as well as all matters in discharge, justification, or excuse.

QUARE EJECIT INFRA TERMINUM, a writ which lay by the ancient law where the wrong-doer or ejector was not himself in possession of the lands, but another who claimed under him.

QUARE IMPEDIT, the ecclesiastical real action at common law, and is resorted to when the patron of an advowson is disturbed in his right of presentation. It lies for the Queen, for a bishop, for executors on their disturbance or that of their testator, for husband and wife jointly, or the husband alone in right of his wife, for a chapter in respect of their possession against the dean, for joint-tenants, tenants in common, and coparceners jointly; but "if one joint-tenant or tenant in common present severally, the ordinary may either admit or refuse to admit such a presentee, unless they join in presentation; and after the six months he may, in that case, present by lapse." *Co. Lit.* 186 b. By 3 Jac. I., c. 5, and 1 W. & M., c. 26, when the patron, if a sole patron, is a Roman Catholic, or when all the patrons, if there are several claiming under the same title, are of that persuasion, the right of presentation is given to the universities; but where a Protestant and Roman Catholic are co-patrons, the right of presentation is in the former alone, and *quare impedit* lies if the ordinary refuse to admit and institute the presentee of the Protestant co-patron. *Quare impedit* may be brought for a church or hospital, chapel, vicarage, prebend, or deanery. The disturbance is complete when the bishop admits and institutes a clerk upon the presentation of a pretended patron, or when he refuses to admit the presentee of the patron under any pretence; but it is no disturbance if a stranger present, unless the bishop admit, and a wrongful collation by the ordinary does not amount to a disturbance; but in such case the patron must present, and the ordinary refuse to admit his clerk before this action can be maintained. The plaintiff or defendant must have an immediate right of presentation, and not merely a reversion or remainder. The patron is always plaintiff in this action, and not the clerk, as the law supposes the injury to be offered to the former only, by obstructing or refusing the admission of his nominee, and not to the latter, who has no right in him till instituted, and of course can suffer no injury. The

action may be brought against the pseudo-patron, his clerk, or the ordinary, and it is sometimes advisable to join the three as defendants.

This action commences with the original writ of *quare impedit*, addressed to the sheriff, to command the defendants who disturb the presentation to permit the plaintiff to present a fit person (without specifying whom) to such a vacant church, which he claims to be in his gift and his presentation, to which the defendants unjustly hinder, and unless they do so, then that they appear in court on such a day to shew why they hinder him. The summons on the original is to be served on the defendants, either personally or by fixing it to the church door of the benefice to which the suit relates, but no proclamation is necessary; and if the defendant do not either appear or cast an essoign at the return of the original writ; or if after casting an essoign he do not appear at the adjournment day, there issues, instead of a grand cape, a writ of attachment, commanding the sheriff to put the defendants, by gages and safe pledges, to answer for their default, and if no appearance be entered in due time to this, then a writ of grand distress, commanding the sheriff to distrain the defendants by all their lands and chattels in his bailiwick, in order to compel their appearance. If the defendants do not appear at the return of the first distringas, the plaintiff shall have judgment by default.

If the defendants appear, the plaintiff declares, showing a title in himself or ancestors, or those under whom he claims, an actual presentation under that title, and a disturbance before the action brought. Upon this the bishop and clerk usually disclaim all title, save only the one as ordinary, to institute and admit, and the other as presentee of the patron, who is left to defend his own right. They may, however, respectively defend their own right to collate or be instituted, and may also plead certain dilatory pleas, or in bar, the general issue *ne disturba pas*, which would entitle the plaintiff, so far as these defendants are concerned, to immediate judgment to recover his presentation, unless he intend to dispute the fact and go for damages. The bishop may plead in bar that the clerk presented by the plaintiff was not fit for want of learning, or otherwise, to be presented. The patron is entitled to resort to certain dilatory pleas, or may plead plenarty, or *ne disturba pas*, or may traverse the title of the plaintiff. In this action both parties are plaintiffs, and either of them may be entitled to a judgment, that he recover the presentation, and have a writ to the bishop for the admission of his clerk. The trial is generally by a jury, but sometimes by certificate as to ability of the plaintiff's clerk, institution, deprivation, resignation, or plurality.

Upon the trial of an issue in fact, if the verdict be for the plaintiff, the jury is directed to inquire:—1st, whether the church be full;

2d, upon whose presentment; 3d, how long since it was void; 4th, the yearly value: which are called the four usual points. If the church be void, no damages are given; but if the church be full, then the plaintiff is entitled to two years' value, or six months' value, according to the circumstances, pursuant to the Statute 2 Westminster. When the disturber, instead of pleading, suffers judgment by default by *nil dicit*, a writ of enquiry of the four usual points is issued to the sheriff. After a judgment for the plaintiff, a writ of *admittendum clericum* issues to the bishop, in obedience to which the plaintiff's presentee is duly admitted; costs are given by 4 & 5 Wm. IV., c. 39. 3 *Step. Com.* 661.

QUARE INCUMBRAVIT, a writ which lay against a bishop, who, within six months after the vacation of a benefice, confers it on his clerk, whilst two others are contending at law for the right of presentation, to show cause why he has incumbered the church. *Reg. Orig.* 32. Abolished by 3 & 4 Wm. IV., c. 27.

QUARE INTRUSIT, a writ that formerly lay where the lord proffered convenable marriage to his ward, and he refused, and entered into the land, and married another; that is, intruded; the value of his marriage not being satisfied to the lord. Abolished by 12 Car. II., c. 24.

QUARE NON ADMISIT, a writ to recover damages against a bishop who does not admit a plaintiff's clerk. It is however rarely or never necessary; for it is said that a bishop refusing to execute the writ *ad admittendum clericum*, or making an insufficient return to it, may be fined. *Wats. C. L.* 302.

QUARE NON PERMITTIT, an ancient writ, which lay for one who had a right to present to a church for a turn against the proprietary. *Fleta*, l. 5, c. 6.

QUARE OBSTRUXIT, a writ which lay for him who, having a liberty to pass through his neighbour's ground, could not enjoy his right, because the owner had so obstructed it. *Fleta*, l. 4, c. 26.

QUARREL, a dispute, contest; also, an action real or personal.

QUARTER DAYS, the days which begin the four quarters of the year, viz., the 25th of March, or Lady Day; the 24th of June, or Midsummer Day; the 29th of September, or Michaelmas Day; and the 25th of December, or Christmas Day.

QUARTERIZATION, dividing a criminal into four quarters.

QUARTER SEAL, the seal kept by the director of the Chancery in Scotland. It is in the shape and impression of the fourth part of the great seal; and is in the Scotch statutes called the Testimonial of the Great Seal. Gifts of lands from the Crown pass the seal in certain cases. *Bell.*

QUARTER SESSIONS. See **GENERAL QUARTER SESSIONS**, and **BOROUGH SESSIONS**.

QUARTO DIE POST, the fourth day inclusive after the return of a writ, and if a defendant appeared then it was sufficient; but this practice is now altered.

QUASH, to overthrow or annul.

QUASI-CONTRACT, an act which has not the strict form of a contract, but yet has the force of it; an implied contract.

QUASI-CRIME, or **QUASI-DELICT**, the action of one doing damage or evil involuntarily.

QUASI ENTAIL. An estate *per autre vie* may be granted, not only to a man and his heirs, but to a man and the heirs of his body, which is termed a *quasi entail*; the interest so granted not being properly an estate tail (for the Statute *De Donis* applies only where the subject of the entail is an estate of inheritance), but yet so far in the nature of an estate tail, that it will go to the heir of the body as special occupant during the life of *cestui que vie*, in the same manner as an estate of inheritance would descend, if limited to the grantee and the heirs of his body. And such estate may be also granted with a remainder thereon during the life of *cestui que vie*; and the alienation of the *quasi* tenant in tail will bar not only his issue, but those in remainder. The alienation, however, for that purpose (unlike that of an estate tail, properly so called), may be effected by any method of conveyance, except only a devise by will. 1 *Step. Com.* 417.

QUEEN [*cwæn*, Sax., a wife], a woman who is sovereign of a kingdom. The queen regent, regnant, or sovereign, is she who holds the Crown in her own right, as Queen Victoria, who has the same powers, prerogatives, rights, dignities, and duties, as if she had been a King.

1. With regard to the Queen's title, the Crown of England, by the positive constitution of the kingdom, has ever been descendible, and so continues, and it is descendible in a course peculiar to itself, yet subject to limitation by Parliament; but notwithstanding those limitations, the Crown retains its descendible quality, and becomes hereditary in the prince to whom it is limited.

2. Her duties are to govern the people according to law, to execute judgment in mercy, and to maintain the established religion.

3. Her prerogatives are—

(a) As to her dignity or royal character, which consists in the legal attributes of—

- (a) Personal sovereignty.
- (β) Absolute perfection.
- (γ) Political perpetuity.

(b) As to her regal power, in which consists the executive part of government; in foreign concerns, the Queen, as the representative of the nation, has the right or prerogative of—

- (a) Sending and receiving ambassadors.
- (β) Making treaties.
- (γ) Proclaiming war or peace.
- (δ) Issuing reprisals.

(e) Granting safe-conducts.

In domestic affairs, the Queen is a constituent part of the supreme legislative power; has a negative upon all new laws; and is bound by no statute unless specially named therein. She is also considered as the general of the kingdom, and may raise fleets and armies, build forts, appoint havens, erect beacons, prohibit the exportation of arms and ammunition, and confine her subjects within the realm, or recall them from foreign parts. She is also the fountain of justice and general conservator of the peace, and therefore may erect courts (wherein she has a legal ubiquity), prosecute offenders, pardon crimes, and issue proclamations. She is likewise the fountain of honor, office, and privilege. She is also the arbiter of domestic commerce (but not of foreign, which is regulated by the law of merchants). She is therefore entitled to the erection of public marts, the regulation of weights and measures, and the coinage or legitimation of money. The Queen is also the supreme head of the church, and as such, convenes, regulates, and dissolves synods, nominates bishops, and receives appeals in all ecclesiastical causes.

4. The Queen's revenue is either ordinary or extraordinary.

(a) The ordinary is either

(1) Ecclesiastical, consisting in

(a) The custody of the temporalities of vacant bishoprics.

(b) Corodies and pensions.

(c) Extra-parochial tithes.

(d) The first-fruits and tenths of benefices.

(2) Temporal, consisting in

(a) The demesne lands of the Crown.

(b) The hereditary excise; being part of the consideration for the purchase of the feudal profits, and the prerogatives of purveyance and pre-emption.

(c) Forests.

(d) Courts of justice.

(e) Royal fish.

(f) Wrecks and things jetsam, flotsam, and ligan.

(g) Royal mines.

(h) Treasure trove.

(i) Waifs.

(k) Estrays.

(l) Forfeitures for offences.

(m) Escheats.

(n) The custody of idiots and lunatics.

(b) Extraordinary, which consists in aids, subsidies, and supplies granted to her by the commons in Parliament, and raised by taxation. 1 Bl. Com. 190.

QUEEN ANNE'S BOUNTY. See BOUNTY OF QUEEN ANNE.

QUEEN CONSORT, the wife of the reigning king. She is a public person, exempt and distinct from the king, for she is of ability to purchase lands and to convey them, to make leases, to grant copyholds, and do other acts of ownership, without the concurrence of

her husband. She is also capable of taking a grant from the king, which no other wife is from her husband. She has separate courts and offices distinct from the king's, not only in matters of ceremony, but even of law; and her attorney and solicitor general are entitled to a place within the bar of his majesty's courts, together with the king's counsel. She may likewise be sued, and sue alone, without joining her husband; she is indeed considered as a *feme sole*, and not as a *feme covert*. She pays no toll, nor is she liable to any fine in any court. As to the security of her life and person, she is placed on the same footing with the king.

QUEEN DOWAGER, the widow of the king. She enjoys most of the privileges belonging to her as queen consort. But it is not treason to conspire her death or violate her chastity, because the succession to the Crown is not thereby endangered; but no man can marry her without special licence from the Crown, on pain of forfeiting his lands and goods. If she marry a subject, she does not lose her regal dignity, as peeresses dowager (when commoners by birth) do their peerage, when they marry commoners.

QUEEN GOLD, a royal revenue belonging to every queen consort during her marriage with the king, and due from every person who has made a voluntary offer or fine to the king, amounting to ten marks or upwards, for or in consideration of any privileges, grants, licences, pardons, or other matters of royal favour conferred upon him by the king, and it is due in the proportion of one-tenth part more, over and above the entire offering or fine made to the king, and becomes an actual debt of record to the queen's Majesty, by the mere recording of the fine. But no such payment is due for any aids or subsidies granted to the king in Parliament or convocation; nor for fines imposed by courts on offenders against their will, nor for voluntary presents to the king, without any consideration money from him to the subject, nor for any sale or contract whereby the present revenues and possessions of the Crown are granted away or diminished. It is now quite obsolete.

QUEEN REGNANT, she who holds the Crown in her own right.

The husband of a queen regnant is her subject. The act of naturalization of Prince Albert, 3 & 4 Vict., c. 2, required that he should take the oaths of allegiance and supremacy. It is provided, by 3 & 4 Vict., c. 52, that if there be issue of her Majesty, who at her demise shall become king or queen of this realm, his royal highness shall, until such issue attain the age of eighteen, be the guardian of such issue, and shall be entitled in his or her name, and under the style of Regent of the United Kingdom, to exercise the royal power. The act, however, restrains him from giving the royal assent to any bill for varying the course of succession to the Crown as established by 12 & 13 Wm. III., c. 2, or for altering the

Act of Uniformity, 13 & 14 Car. II., c. 4, relative to the services and ceremonies of the Church of England. And it is further provided, that if after becoming guardian and regent, he should profess, or marry a person who professes the popish religion, or should cease to reside in the United Kingdom, all the authorities so vested in him shall determine.

QUEEN'S ADVOCATE, an officer in Scotland, similar, but in some respects superior, to that of the Queen's attorney general in England. It is his province to prosecute all criminal actions, and bring the criminals to punishment, without the intervention of any grand jury, and at the public expense.

QUEEN'S BENCH, a court of record, and the supreme court of common law in this kingdom, consisting of a lord chief justice and four *puisné* justices, who are by their offices the sovereign conservators of the peace, and supreme coroners of the land.

The court consists of two kinds of jurisdiction, viz., civil, or the plea side; and criminal, or the Crown side. Till the time of Edward II. the matter of both kinds was entered promiscuously on the rolls; but the rolls were then discriminated, and those of the Crown side entitled "*Rex*," though both were piled up in the same bundles. And thus it continued very long; but of later times the records of civil pleas are bound up by themselves, and the records of pleas of the Crown bound up by themselves, and kept in the Crown Office, under the immediate custody of the Coroner of the Queen's Bench, who is also the Queen's attorney in that court and clerk of the Crown.

This court, which is the remnant of the *aula regia*, is not, nor can be, from the very nature and constitution of it, fixed to any certain place, but may follow the Sovereign's person, for which reason, all process issuing out of this court in the sovereign's name, is returnable "*ubicunque fuerimus in Angliâ*." It has, however, sat, for some centuries past, at Westminster.

The jurisdiction of this court is very high and transcendent; it keeps all inferior jurisdictions within the bounds of their authority, and may either remove their proceedings to be determined here, or prohibit their progress below. It superintends all civil corporations in the kingdom. It commands magistrates and others to do what their duty requires, in every case where there is no specific remedy. It protects the liberty of the subject by speedy and summary interposition. It has a concurrent jurisdiction with the Common Pleas and the Exchequer, in all personal and mixed actions. It is the principal court of criminal jurisdiction. 3 *Step. Com.* 403.

QUEEN'S COUNSEL, barristers who have been called within the bar, and selected to be the Queen's counsel; learned in the law. They answer, in some measure, to the advocates of the revenue, *advocati fisci*, among the Romans. They must not be employed

against the Crown without special licence, which, however, is never refused. It costs about nine pounds.

QUEEN'S EVIDENCE, an accomplice, to whom a hope is held out, that if he will fairly disclose the whole truth as a witness on the trial, and bring the other offenders to justice, he shall himself escape punishment. 1 *Phil. Evid.* 31. A jury may, if they think fit, convict on the unsupported testimony of an accomplice.

QUEEN'S PRISON, a jail appropriated to the debtors and criminals confined under process or by authority of the superior courts at Westminster, the High Court of Admiralty, and also to persons imprisoned under the bankrupt law. The 5 & 6 Vict., c. 22, consolidated the Queen's Bench, Fleet, and Marshalsea Prisons.

QUE ESTATE [*quorum statum*], as much as to say, whose estate he has. It is a plea where one entitling another to land, says, that he and they whose estate he has, have enjoyed the same. A person cannot prescribe in anything by a *que estate* that lies in grant, and cannot pass without deed or fine; but in him and his ancestors he may, because he comes in by descent without any conveyance. 1 *Inst.* 121; 2 *Bl. Com.* 266.

QUE EST MESNE, a term used in actions of trespass, &c., for a direct justification of the very act complained of by the plaintiff as a wrong.

Quemadmodum ad questionem facti non respondent judices, ita, ad questionem juris non respondent juratores. Co. Lit. 295.—(In the same manner that judges do not answer to questions of fact, so jurors do not answer to questions of law.)

QUEM REDDITUM REDDIT, an old writ which lay where a rent-charge, or other rent which was not rent-service, was granted by fine, holding of the grantor. If the tenant would not attorn, then the grantee might have had this writ. O. N. B. 126.

QUERELA, an action or declaration preferred in any court of justice.

QUERELA CORAM REGE A CONCILIO DISCUTIENDA ET TERMINANDA, a writ by which one is called to justify a complaint of a trespass made to the king himself, before the king and his council.

QUERELE, a complaint to a court.

QUERENT [*querens*, Lat.], a plaintiff, complainant, enquirer.

QUEST, inquest, inquisition, or enquiry.

QUESTION, interrogatory; anything enquired.

QUESTMAN or **QUESTMONGER**, starter of law suits or prosecutions; also, a person chosen to inquire into abuses, especially such as relate to weights and measures.

QUESTUS, land which does not descend by hereditary right, but is acquired by one's own labour and industry.

QUESTUS EST NOBIS, a writ of nuisance, which, by 15 Edw. I., lay against him to whom a house or other thing that breeds a nuisance, is descended or alienated; whereas

before that statute, the action lay only against him who first levied or caused the nuisance, to the damage of his neighbour.

QUIA EMPTORES, *statute of*, 18 Edw. I., st. 1, c. 1, A.D. 1290. Prior to this statute, any person might, by a grant of land, have created a tenure as of his person; but if no such tenure were reserved, the feoffee held of the feoffor, by the same services by which the feoffor held of his superior lord. The consequence was, that all the fruits of tenure fell into the hands of the feoffors or mesne lords, to the prejudice of the superior lords of the fee; for remedy whereof, it was by this statute enacted, "That from henceforth it shall be lawful to every freeman to sell at his own pleasure his lands and tenements, or part of them, so that the feoffee shall hold the same lands or tenements of the chief lord of the same fee, by such service and customs as his feoffor held before." 2 Inst. 500.

Qui abjurat regnum amittit regnum sed non regem; patriam sed non patrem patriæ. 7 Co. 9.—(He who abjures the realm, loves the realm, but not the king; the country, but not the father of the country.)

Qui accusat integræ famæ sit et non criminosis. 3 Inst. 26.—(Let him who accuses be of clear fame, and not criminal.)

Qui adimit medium, derimit finem. Co. Lit. 161.—(He who takes away the middle, destroys the end.)

Qui aliquid statuerit parte inaudita altera, æquum licet dixerit, haud æquum facerit. 6 Co. 52.—(He who decides anything, one party being unheard, though he should decide right, does wrong.)

Qui bene interrogat bene docet. 3 Buls. 227.—(He who questions well, learns well.)

Qui bene distinguit bene docet. 2 Inst. 470.—(He who distinguishes well, learns well.)

QUICK WITH CHILD. See ABORTION.

Qui concedit aliquid concedere videtur et id sine quo concessio est irrita, sine quo res ipsa esse non potuit. 11 Co. 52.—(He who concedes anything, is considered as conceding that without which his concession would be idle, without which the thing itself could not exist.)

Qui contemnit præceptum, contemnit præcipientem. 12 Co. 96.—(He who contemns the precept, contemns the party giving it.)

Quicquid est contra normam recti est injuria. 3 Buls. 313.—(Whatever is against the rule of right, is an injury.)

Quicquid in excessu actum est lege prohibetur. 2 Inst. 107.—(Whatever is done in excess, is prohibited in law.)

Quicquid judicis auctoritati subjicitur novitati non subjicitur. 4 Inst. 66.—(Whatever is subject to the authority of the Judge, is not subject to novelty.)

Quicquid plantatur solo, solo cedit. Off. of Exec. 57.—(Whatever is affixed to the soil, belongs to the soil.)

Quicquid solvitur, solvitur secundum modum solventis. 2 Vern. 606.—(Whatever is dissolved, is dissolved according to the manner of the party dissolving.)

Qui cum alio contrahit, vel est, vel esse debet, non ignarus conditionis ejus.

This rule, however reasonable in its application to the condition of a person as fixed by the law of the country where he is domiciled, is not so clear in point of convenience or equity, when applied to the condition of a person as fixed by the law of a foreign country. How are the inhabitants of any country to ascertain the condition of a stranger dwelling among them, as fixed by the law of a foreign country, where he was born, or had acquired a new domicile? Even courts of justice do not assume to know what the laws of a foreign country are; but require them to be proved; how then shall private persons be presumed to have better means of knowledge? On the other hand, it may be said with great force, that contracts ought to be governed by the law of the country where they are made, as to the competence of the parties to make them, and as to their validity; because the parties may well be presumed to contract with reference to the laws of the place where the contract is made, and is to be executed. Such a rule has certainty and simplicity in its application. It ought not, therefore, to be matter of surprise if the country of the party's birth should hold such a contract valid or void, according to its own law; and that, nevertheless, the country where it is to be made and to be executed, should hold it valid or void, according to its own law. It has been well observed by an eminent Judge (Lord Stowell), that "with respect to any ignorance arising from foreign birth and education, it is an indispensable rule of law as exercised in all civilized countries, that a man who contracts in a country, engages for a competent knowledge of the law of contracts of that country. If he rashly presume to contract without such knowledge, he must take the inconveniences resulting from such ignorance upon himself, and not attempt to throw them upon the other party who has engaged under a proper knowledge and sense of the obligation which the law would impose upon him by virtue of that engagement." *Dalrymple v. Dalrymple*, 2 Hagg. Cons. R. 61; *Story's Conf. of Laws*, 93.

Quicumque habet jurisdictionem ordinariam est illius loci ordinarius. Co. Lit. 344.—(Whoever has an ordinary jurisdiction, is ordinary of that place.)

Quicumque jussu judicis aliquid facerit non videtur dolo malo fecisse, quia parere necesse est. 10 Co. 71.—(Whoever does anything by the command of a Judge, is not reckoned to have done it with an evil intent, because it is necessary to obey.)

Qui destruit medium destruit finem. 10 Co. 51.—(He who destroys the middle, destroys the end.)

Qui doit inheriter al père doit inheriter al fitz. —(He who would have been heir to the father, shall be heir to the son.)

QUID JURIS CLAMAT, a judicial writ issued out of the record of a fine, which remained

with the *custos brevium* of the Common Pleas before it was engrossed; and it lay for the grantee of a reversion or remainder, when the particular tenant would not attorn. *Reg. Jud.* 571.

QUID PRO QUO (what for what), the mutual consideration and performance of both parties to a contract.

Quid sit jus, et in quo consistit injuria, legis est definire. Co. Lit. 158 b.—(What right is, and what injury is, it is the business of the law to declare.)

Qui eorum vestigia insistant eorum exitus perhorrescant. 4 Inst. 487.—(Let those dread their fate who tread in their steps.)

QUIETARE, to quit, acquit, discharge, or save harmless.

QUIETE CLAMARE, to quit claim, or renounce all pretensions of right and title. *Bract.* l. 5.

QUIETUS, freed or acquitted.

QUIETUS REDITUS, a quit-rent.

Qui evertit causam evertit causatum futurum. 10 Co. 51.—(He who overthrows the cause, overthrows the future consequence.)

Qui ex damnato coitu nascuntur inter liberos non computentur. Co. Lit. 8.—(Those who are born out of unlawful intercourse, are not counted among children.)

Qui facit per alium facit per se. Co. Lit. 258.—(He who acts through another, acts through himself.)

Qui habet jurisdictionem absolvendi habet, jurisdictionem ligandi. 12 Co. 59.—(He who has the jurisdiction of loosening, has the jurisdiction of binding.)

Qui hæret litera hæret in cortice. Co. Lit. 289.—(He who sticks to the letter, sticks to the bark.)

QUI IMPROVIDE, a supersedeas granted where a writ is erroneously sued out or misawarded.

Qui in utero est, pro jure nato habetur, quoties de ejus commodo quæritur.—(He who is in the womb, is now held as born, as often as it is questioned concerning his benefit.)

Qui jure suo utitur, nemini facit injuriam. *Reg. Jur. Civ.*—(He who conducts himself according to his own legal rights, does an injury to nobody.)

Qui jussu judicis aliquod fuerit non videtur dolo malo fecisse, quin parere necesse est. 10 Rep. 76.—(He who does anything by command of a Judge, it will not be supposed that he acted from an improper motive, because it was necessary to obey.)

Quilibet potest renunciare juri pro se introducto. 2 Inst. 183.—(Every man can renounce a right introduced for himself.)

Qui molitur insidias in patriam id facit quod insanus nautæ perforans navem in quâ vehitur. 3 Inst. 36.—(He who plots snares against his country, does that which an insane sailor does, boring through the ship in which he is carried.)

Qui non cadunt in constantem virum vani timores sunt æstimandi. 7 Co. 27.—(Those fears are to be esteemed vain which do not affect a firm man.)

Qui non habet in ære, luat in corpore: ne quis peccetur impunè. 2 Inst. 173.—(What a man cannot pay with his purse, he must suffer in person, lest any one should sin with impunity.)

Qui non habet potestatem alienandi habet necessitatem retinendi. Hob. 336.—(He who has not the power of alienating, is obliged to retain.)

Qui non libere veritatem pronunciat proditor est veritatis. 4 Inst. Epil.—(He who does not willingly speak truth, is a betrayer of the truth.)

Qui non obstat quod ob stare potest facere videtur. 2 Inst. 146.—(He who does not prevent what he can prevent, seems to commit the thing.)

Qui non improbat, approbat. 3 Inst. 27.—(He who does not blame, approves.)

Qui non prohibet quod prohibere potest assentire videtur. 2 Inst. 308.—(He who does not forbid what he can forbid, appears to assent.)

Qui non propulsat injuriam quando potest, infert. *Jenk. Cent.* 271.—(He who does not repeal an injury when he can, induces it.)

QUINQUAGESIMA SUNDAY, Shrove-Sunday.

QUINQUE PORTUS, the Cinque Ports.

QUINSTEME or **QUINZIME**, fifteenth. 13 *Edw.* l.

QUINTO EXACTUS, the fifth or last call or requisition of a defendant sued to outlawry.

Qui obstruit auditum, destruit commodum. Co. Lit. 161.—(He who obstructs an entrance, destroys a conveniency.)

Qui omne dicit, nihil excludit. 4 Inst. 81.—(He who says all, excludes nothing.)

Qui parcit nocentibus, innocentibus punit. *Jenk. Cent.* 126.—(He who spares the guilty, punishes the innocent.)

Qui peccat ebrius, luat sobrius. *Cary's Rep.* 133.—(Let him who sins when drunk, be punished when sober.)

Qui per alium facit per seipsum facere videtur. Co. Lit. 258.—(He who does anything by the instrumentality of another, is considered as doing it himself.)

Qui per fraudem agit, frustrà agit. 2 *Roll. Rep.* 17.—(What a man does fraudulently, he does in vain.)

Qui periculum amat in eo peribit.—(He who loves danger, will perish by it.)

Qui potest et debet vetare, jubet. *Gith.* 35.—(He who is able and ought to forbid, commands.)

Qui primum peccat ille facit rixam. *Godb.*—(He who sins first, makes the strife.)

Qui prior est tempore potior est jure. Co. Lit. 14.—(He who is first in time, is more powerful in law.)

Qui pro me aliquid facit, mihi fecisse videtur. 2 Inst. 501.—(He who for me does anything, appears to do it by me.)

Qui providet sibi providet hæredibus.—(He who provides for himself, provides for his heirs.)

Qui rationem in omnibus quærent rationem sub-

vertunt. 2 Co. 75.—(They who seek a reason for everything, subvert reason.)

Quisquis præsумitur bonus; et semper in dubiis pro reo respondendum. Jur. Civ.—(Every one is presumed good, and always in doubt, presumption is in favour of the defendant.)

Qui semel actionem renunciaverit, amplius repetere non potest. 8 Co. 59.—(He who renounces an action once, cannot any more repeat it.)

Qui semel malus, semper præsумitur esse malus in eodem genere. Cro. Car. 317.—(He who is once bad, is presumed to be bad always in the same degree.)

Qui sentit commodum, sentire debet et onus: et de contra. 1 Co. 99.—(He who receives the advantage, ought also to suffer the burthen, and on the contrary.)

The converse of this maxim also holds.

Quisquis est qui velit juris consultus haberi continuet studium, velit a quocunque doceri. Jenk. Cent.—(Whoever wishes to be a juriconsult, let him continually study, and desire to be taught by everything.)

Qui tacet consentire videtur. Jenk. Cent. 32.—(He who is silent, appears to consent.)

Qui tacet consentire videtur ubi tractatur de ejus commodo. 9 Mod. 38.—(He who is silent is considered as assenting, when it is debated concerning his convenience.)

QUI TAM (who as well), proceedings which are partly at the suit of the Queen and partly at that of a subject; so called from the words "*Qui tum pro domina regina, quam pro se ipso.*"

Qui tardius solvit, minus solvit. Jenk. Cent. 58.—(He who releases slowly, releases little.)

QUIT CLAIM, a quitting of one's action, claim, or title.

Qui timent, cavent et vitant. Office of Exec. 162.—(They who fear, are wary and avoid.)

QUIT RENT, a rent, the payment of which frees from services, &c.

QUOAD HOC (as far as this).

Quod ab initio non valet in tractu temporis non convalescet. 4 Co. 2.—(That which is bad in its commencement, improves not by lapse of time.)

Quod alias bonum et justum est, si per vim vel fraudem petatur, malum et injustum efficitur. 3 Co. 78.—(What otherwise is good and just, if it be sought by force and fraud, becomes bad and unjust.)

QUOD CLERICI BENEFICIATI DE CANCELLARIA, a writ to exempt a clerk of the Chancery from the contribution towards the proctors of the clergy in Parliament, &c. *Reg. Orig.* 261.

QUOD CLERICI NON ELIGANTUR IN OFFICIO BALLIOR, &c., a writ which lay for a clerk, who, by reason of some land he has, is made, or is about to be made, bailiff, headle, reeve, or some such officer. *Reg. Orig.* 187.

Quod constat clare, non debet verificari.—(That which is clearly apparent, needs not to be verified.)

Quod constat curiæ opere testium non indiget.

2 Inst. 662.—(What appears to the court, needs not the help of witnesses.)

Quod contra legem fit, pro infecto habetur.

4 Co. 31.—(What is done contrary to law, is considered as not done.)

QUOD CUM, that whereas.

Quodcunque aliquis ab tutelam corporis sui fecerit, jure id fecisse videtur. 2 Inst. 590.—(Whatever any one does in defence of his person, that he is considered to have done legally.)

Quod datum est ecclesiæ, datum est Deo. 2 Inst. 2.—(What is given to the church, is given to God.)

Quod demonstrandi causâ additur rei satis demonstratæ, frustra fit. 10 Co. 113.—(What is added to a thing sufficiently palpable, for the purpose of demonstration, is vain.)

Quod dubitas, ne feceris. P. C. 300.—(Where you doubt, do nothing.)

QUOD EI DEFORCEAT, a writ for a tenant in tail, tenant in dower, by the courtesy, or for term of life, having lost any land by default, against him who recovers, or his heir. *Reg. Orig.* 171.

Quod est ex necessitate nunquam introducitur, nisi quando necessarium. 2 Rol. Rep. 512.—(What is introduced of necessity, is never introduced, except when necessary.)

Quod est inconveniens, aut contra rationem non permissum est in lege. Co. Lit. 178.—(What is inconvenient, or contrary to reason, is not permitted in law.)

Quod est necessarium est licitum. Jenk. Cent. 76.—(What is necessary, is lawful.)

Quod fieri non debet factum valet. 5 Co. 38.—(What ought not to be done, avails when done.)

Quod inconsulto fecimus consultius revocemus. Jenk. Cent. 116.—(What is done without counsel, we revoke more considerately.)

Quod in jure scripto "jus" appellatur, id in lege Angliæ "rectum" esse dicitur. Co. Lit. 158.—(What in written law is called "*jus*," in the law of England, is said to be "*rectum*.")

Quod in minori valet valebit in majori; et quod in majori non valet nec valebit in minori. Co. Lit. 260.—(What avails in the minor, will avail in the major; and what does not avail in the major, will not avail in the minor.)

Quod in uno similium valet, valebit in altera. Co. Lit. 191.—(What avails in one of two things, will avail in the other.)

Quod meum est sine me auferri non potest. Jenk. Cent. 251.—(What is mine, cannot be taken away without me.)

Quod necessariè intelligitur id non deest. 1 Buls. 71.—(What is necessarily understood, is not wanting.)

Quod necessitas cogit defendit. H. H. P. C. 54.—(What necessity forces, it justifies.)

Quod non apparet non est; et non apparet judicialiter ante judicium. 2 Inst. 479.—(That which appears not, is not, and appears not judicially before judgment.)

Quod non capit christus, capit fiscus. 3 Inst. 132.—(What the church does not take, the exchequer does.)

Quod non habet principium non habet finem.

Co. Lit. 345.—(That which has no beginning, has no end.)

Quod non legitur non creditur. 4 Inst. 304.—(What is not read, is not believed.)

Quod non valet in principalia, in accessoria seu consequentia non valebit; et quod non valet in magis propinquo, non valebit in magis remoto.

8 Co. 78.—(That which is not good in its principal, will not be good as to accessories or consequences; and what is not of force in regard to things near it, will not be of force in things remote from it.)

Quod nostrum est, sine facto sive defectu nostro, amitti seu in alium transferri non potest.

8 Co. 92.—(That which is ours cannot be lost or transferred to another without our own act, or our own fault.)

Quod nullius est, est domini regis. Fleta, l. 3.—(That which is the property of nobody, belongs to our lord the king.)

Quod nullius est, id ratione naturali occupanti conceditur. Pand. l. xli.—(What belongs to nobody is given to the occupant by natural right.)

Quod per me non possum, nec per alium. 4 Co. 24.—(What I cannot do in person, I cannot do by proxy.)

QUOD PERMITTAT, a writ which lay against any person who erected a building, though on his own ground, so near to the house of another, that it hangs over or becomes a nuisance to it. *Termes de Ley*, 479.

QUOD PERMITTAT PROSTERNERE, a writ, in the nature of a writ of right, to abate a nuisance. *F. N. B.* 104.

Quod per recordum probatum, non debet esse negatum.—(What is proved by record, ought not to be denied.)

QUOD PERSONA NEC PREBENDARIJ, &c., a writ which lay for spiritual persons, distrained in their spiritual possessions, for payment of a fifteenth with the rest of the parish. *F. N. B.* 176.

Quod primum est in intentione, ultimum est in operatione. Bacon.—(That which is first in intencion, is last in operation.)

Quod prius est verius est; et quod prius est tempore potius est jure. Co. Lit. 347.—(What is first is true, and what is first in time is better in law.)

Quod pro minore licitum est, et pro majore licitum est. 8 Co. 43.—(That which is lawful as to the minor, is lawful as to the major.)

Quodque dissolvitur eodem modo quo ligatur. 2 Rol. Rep. 39.—(In the same manner that a thing is bound, in the same manner it is unbound.)

Quod quisquis norat in hoc se exerceat. 11 Co. 10.—(Let every one employ himself in what he knows not.)

Quod remedio destituitur ipsa re valet si culpa absit. Bacon.—(That which is without remedy avails of itself if without fault.)

Quod restringendi causam additur in casu domini regis, si falsum sit, vitiat cartam. 10 Co. 110.—(That which is added for the purpose of restraint in the case of the king, if false, vitiates the grant.)

Quod semel meum est amplius meum esse non potest. Co. Lit. 49.—(What is once mine, cannot be mine more completely.)

Quod semel placuit in electione, amplius displicere non potest. Co. Lit. 146.—(Where choice is once made, it cannot be disapproved any longer.)

Quod sub certa forma concessum vel reservatum est, non trahitur ad valorem seu compensationem. Bacon.—(What is given or reserved under a certain form, is not to be drawn into a valuation or compensation.)

Quod tacite intelligitur deesse non videtur. 4 Co. 22.—(What is silently understood, does not appear to be wanting.)

Quod vanum et inutile est, lex non requirit. Co. Lit. 319.—(The law requires not what is vain and useless.)

QUO JURE, a writ which lay for him who had land wherein another challenged common of pasture, time out of mind; and it was to compel him to show by what title he challenged it. *F. N. B.* 158.

Quo ligatur, eo dissolvitur. 2 Rol. Rep. 21.—(By the same power by which a man is bound, by that is he released.)

QUO MINUS, a writ which lay for him who had a grant of house-bote and hay-bote in another's woods against the grantor, making such waste as the grantee could not enjoy his grant. *O. N. B.* 148.

It also lay for the Queen's accountant in the Exchequer, against whom he had any cause of personal action, suggesting that he is thereby made *less able* to pay the Queen's rent; and this surmise gave jurisdiction to the Court of Exchequer to hear and determine the cause of any other person. It is now abolished.

Quomodo quid constituitur eodem modo dissolvitur. Jenk. Cent. 74.—(In the same manner by which anything is constituted, by that is it dissolved.)

QUONIAM ATTACHIAMENTA, one of the oldest books of the Scotch law, so called from the first words of the volume.

QUORUM (of whom).

Quorum prætextu, nec auget nec minuit sententiam, sed tantum confirmat præmissa. Flow. 52.—(*Quorum prætextu* neither increases nor diminishes a sentence, but only confirms that which went before.)

QUOT, one-twentieth part of the movable estate of a person dying in Scotland, anciently due to the bishop of the diocese where he resided.

QUOTA, a tax to be levied in an equal manner.

Quoties duplici jure defertur alicui successio, repudiato novo jure, quod ante defertur supererit vetus. Reg. Jur. Civ.—(As often as a succession comes to a man by a double right, the new right being laid aside, the old one which brought it first will overcome.)

Quoties in verbis nulla est ambiguitas ibi nulla expositio contra verba fienda est. Co. Lit. 147.—(When in the words there is no ambiguity, then no exposition contrary to the words is to be made.)

QUO WARRANTO, a writ issuable out of the Queen's Bench, in the nature of a writ of right, for the Crown, against him who claims or usurps any office, franchise, or liberty, to enquire by what authority he supports his claim, in order to determine the right. It lies also in case of non-user or long neglect of a franchise, or mis-user or abuse of it; being a writ commanding the defendant to show by what warrant he exercises such a franchise, having never had any grant of it, or having forfeited it by neglect or abuse.

This proceeding is generally adopted for the purpose of trying the right to corporate offices, and was resorted to in so many cases after the passing of 5 & 6 Wm. 4, c. 76, for "the regulation of municipal corporations in England and Wales," that the 7 Wm. IV. and 1 Vict., c. 78, "to amend the act for the regulation of municipal corporations," provides, "that every proceeding pending in the Queen's Bench upon any ground on which it is herein declared that the validity of the election into any corporate office shall not be questioned, or for the purpose of bringing into question the validity of any election which is herein declared to be good, shall be discontinued immediately upon the passing of this act, upon payment of the costs incurred up to that time, to be taxed as between attorney and client." This section (20) only operates as a conditional discontinuance, and it was holden that a defendant who wished to avail himself of it, must have first offered to pay the costs incurred by the prosecutor. *The Queen v. Jones*, 2 Nev. & P. 577. By 1 Vict., c. 78, and 6 & 7 Vict., c. 89, it is further enacted, that every application to the Queen's Bench for the purpose of calling upon any person to show by what warrant he claims to exercise the office of mayor, alderman, or burgess, in any borough within the Municipal Corporation Act, shall be made before the end of twelve months after the election of the defendant, or the time when he shall become disqualified; and that no election of any mayor shall be liable to be questioned by reason of a defect in the title of such person to the office of alderman or councillor, to which he may have been previously elected, unless application shall have been made to the Court of Queen's Bench, calling upon such person to show cause by what warrant he claims to exercise such office of alderman or councillor, within twelve months after his election thereto; and that every election to the office of mayor, alderman, councillor, or any other corporate officer within the said boroughs, which shall not have been called in question within twelve months after such election, shall be deemed good and valid.

Informations in the nature of *quo warranto* are of two kinds, and are filed either by the attorney general, or by the coroner and attorney of the Queen, usually called the Master of the Crown Office. Informa-

tions, *quo warranto*, filed by the attorney general, are only filed for the purpose of trying the right to some private franchise claimed by the Crown, and usurped by a subject. When this proceeding is adopted with reference to the exercise of offices of a public nature, it can only be filed by leave of the court, regulated by the preceding statutes. The court exercises a discretion in granting this information, and where there is adequate relief by another mode of proceeding, the court will not generally interfere.

The application may be made in term *ex parte* at the relation of any body interested, but in the rule *nisi*, all the objections to the title must be stated. The affidavit of the relator in support of the application must make out a *prima facie* case. The rule *nisi* is drawn up and served as in other cases; if the rule be enlarged upon the defendant's application, the court will compel him to undertake, should the rule be made absolute, to appear and plead immediately to the information. The clerk of the rules in the Crown Office draws up the rule absolute, the information is filed, and recognizance to prosecute entered into, and a *subpoena* issued to compel an appearance, and an attachment will issue in default thereof. Upon an appearance being entered for the defendant, the prosecutor must give two four-day rules to plead, and after the expiration of the last, should also move in term for a peremptory rule to plead, otherwise the defendant has until the next term to plead. If the defendant obtains no further time to plead, the prosecutor may sign judgment at the expiration of eighteen days from the service of the peremptory rule to plead. As soon, however, as the defendant has pleaded, a side-bar rule to reply should be entered. After issue joined, the record with writs of *venire* and *distringas* is taken down to trial. If on verdict or judgment on demurrer for the prosecutor, it appears that a vacancy exists in the corporation, the court will, on motion, grant a peremptory writ of *mandamus* to proceed to the election of another person in the room of the defendant; but under some circumstances a new trial or a repleader will be awarded. *Com. Dig.*, tit. "*Quo Warranto*."

Quum quod ago non valet ut ago, valeat quantum valere potest. 1 Vent. 216.—(When what I do is of no force, as to the purpose for which I do it, let it be of force to as great a degree as it can.)

R

RACHETUM [*redimere*, Lat.], a compensation or redemption of a thief.

RACK [*racke*, Dut., from *racken*, to stretch], an engine of torture.

It was occasionally used as an engine of state; not of law more than once, in the reign of Queen Elizabeth. When, upon the assassination of Villiers, Duke of Buck-

ingham, by Felton, it was proposed in the privy council to put the assassin to the rack, in order to discover his accomplices; the Judges being consulted, declared unanimously, to their own honor, and the honor of the English law, that no such proceeding was allowable by the laws of England. The uncertainty of this punishment as a test and criterion of truth, was long ago very elegantly pointed out by Cicero, though he lived in a state where it was usual to torture slaves, in order to furnish evidence. "*Tamen,*" says he, "*illa tormenta gubernat dolor, moderatur natura cujusque tum animi tum corporis, regit quæsitior, flectit libido, corrumpit spes, infirmat metus; ut in tot rerum angustiis nihil veritati loci relinquatur.*" *Pro Sulla*. 28.

The Marquis Beccaria, with a force of raillery truly exquisite, if the subject were not so improper for merriment, proposes this problem: "The force of the muscles and the sensibility of the nerves of an innocent person being given, it is required to find the degree of pain necessary to make him confess himself guilty of a given crime."—*Encyc. Lond.*

RACK-RENT, rent raised to the uttermost.

RACK-RENTER, one who pays the uttermost rent.

RACK-VINTAGE, wines drawn from the lees.

RAGEMAN [*regimen*], a rule, form, or precedent.

RAGLORIUS, steward. *Seld. Tit. of Hon.* 597.

RAGMAN'S-ROLL, or **RAGIMUND'S-ROLL**, a roll called from one Ragimund, a legate in Scotland, who summoning all the beneficed clergymen in that kingdom, caused them on oath to give in the true value of their benefices, according to which they were afterwards taxed by the court of Rome.

RAILWAY, a well known mode of travelling, by which mechanical is substituted for animal power.

There are several statutes for the general regulation of railroads, viz., 3 & 4 Vict., c. 97; 5 & 6 Vict., c. 55; 7 & 8 Vict., c. 85; 9 & 10 Vict., c. 28. Consult *Shelford on Railways*.

RAN, open or public theft.

RANGER, a sworn officer of the forest. His office consists chiefly in three points: to walk daily through his charge, and see, hear, and inquire of trespasses in his bailwick; to drive the beasts of the forest, both of venary and chase, out of the disafforested into the forested lands; and to present all trespasses of the forest, at the next court holden for the forest. *Manw.*

RANSOM [*rançon*, Fr.], price of redemption of a captive or prisoner of war, or for the pardon of some great offence. It differs from amercement, because it excuses from corporal punishment.

RANK MODUS, one that is too large; it is a mere rule of evidence, drawn from the improbability of the fact, rather than a rule of law.

RANKING OF CREDITORS, the arrange-

ment of the property of a debtor, according to the claims of the creditors, in consequence of the nature of their respective securities. *Scotch Phrase*.

RAPE, a division of a county, similar to that of a hundred, but oftentimes containing in it more hundreds than one.

RAPE OF THE FOREST, trespass committed in the forest by violence.

RAPE OF WOMEN, not only defloration, but a commission of it against the will of the female; and also, the commission of this violence against a person of a tender age, who has, as yet, in the legal sense of the term, no will.

"It is an accusation," says Sir Matthew Hale, "easy to be made, and harder to be proved, but harder to be defended by the party accused, though innocent."

According to our system of laws, the testimony of the insulted individual is sufficient to condemn the criminal; yet, notwithstanding this correct disposition, it not unfrequently occurs that the opinion of the physician is required in order to elucidate various difficulties connected with the accusation.

1. The physical signs of virginity have been the subject of keen discussion, among anatomists and physiologists; and none of them has led to greater inquiry than the existence of the hymen.

This is understood to be a membrane of a semilunar or occasionally of a circular form, which closes the orifice of the vagina, leaving, however, an aperture sufficiently large to permit the menses to pass.

Some distinguished physiologists have denied its existence altogether, or, in the cases where it is found, consider it a non-natural or morbid occurrence. Among these may be enumerated, Ambrose, Paré, Palfyn, Pinæus, Columbus, Dronis, and Buffon.

Those on the contrary, who from dissection have believed in its presence previous to sexual intercourse, or some other cause destroying it, are Fabricius, Albinus, Ruysch, Morgagni, Halber, Dremerbroek, Hiester, Riolan, Sabatier, Cuvier, Blumenbach, and Denman.

It may be wanting from original mal-conformation, or may be destroyed by disease, or some other cause, and yet the female be pure.

This membrane may, on the other hand, be present, and yet the female be unchaste; nay, she may become pregnant without having it destroyed.

The opinion of physiologists generally is, that it is an extremely equivocal sign.

2. Narrowness of the vagina. In children, this part is extremely small, but it increases in size as they approach to the age of puberty. But we cannot place much reliance on this as a sign.

Parent Duchatelet informs us, as the result of actual inspection, that the genital organs of many prostitutes, some indeed of advanced years, cannot be distinguished from those of the virgin state; and the inference drawn is,

that degrees of amplitude and straightness of the vagina, are, to many women, a natural and congenital state.

3. In the place of the hymen, certain fleshy tubercles, termed *carunculae myrtiformes*, have been observed by anatomists, and a variety in their appearance has been considered indicative of chastity or unchastity. Zachias remarks, that in the former they are red, tumid, and connected by fleshy cords, but, in married women, being situated at the entrance of the vagina, they are found pale, flaccid, and the cords torn asunder. They are generally considered as the remains of the hymen, "*et corruptae adeo pudicitiae indicia.*" They are then found thick, red, and obtuse at their extremities, somewhat resembling a myrtle berry, and from this supposition their name is derived. They generally disappear after frequent coitions or deliveries.

Systematic writers have added to these, other signs, but they are generally equivocal.

The bright red colour of the nipples, the hardness of the breast, and in fine, the general appearance of the female, all deserve attention, but can seldom be of any practical utility in determining on the point under examination.

In cases of young children supposed to have been violated, it will be well to remember an observation made by Devergie, and verified in repeated examinations of healthy subjects. And this is, that at a tender age the labia are at a much greater distance from each other at the upper part than in more advanced years. The opening was, in repeated instances, found to be triangular, and to expose the clitoris.

Marks of external injury are to be considered as corroborating, but not as certain, proofs of the commission of a rape. The weight which they deserve depends on several circumstances, which it is proper to notice:

(a) The age, strength, and state of mind of the respective parties.

(b) A comparison of the sexual organs may be necessary, since cases have occurred in which the male has proved impotency or defective organisation, or has exhibited proofs of the destruction of parts by the venereal disease.

(c) A speedy examination of the parts is all important in disputed cases. The body of the male should also be inspected, whether there be scratches or bruises on it.

Doubts exist whether a rape can be consummated on a grown female, in good health and strength.

The great points to be looked to, says Mr. Alison, are: 1. Whether they made resistance and cried out before they were discovered; 2. Whether they had received blows and actual injury, it being quite certain that at least that violence was inflicted against the will.

Metzger only allows of three cases in which the crime can be consummated; where narcotics have been administered, where many are

engaged against the female, and where a strong man attacks one who is not arrived to the age of puberty.

Notwithstanding all the authorities, it may with justice be supposed that in addition to the cases allowed, fear or terror may operate on a helpless female; she may resist for a long time, and then faint from fatigue; or the dread of instant murder may lead to the abandonment of active resistance.

The following maxims, says Foderé (which he quotes from Boerius), have been adopted for thirty years in Neapolitan jurisprudence, viz., that in accusations for rape, there be full proof of the following facts: 1, that there has been a constant and equal resistance on the part of the person violated; 2, that there is an evident inequality of strength between the parties; 3, that she has raised cries; and 4, that there be some marks of violence present.

In Scotland, according to Baron Hume, the following facts are necessary to be proved on a charge of rape: 1, penetration, but there is no distinct reference made to emission; 2, actual force in the consummation, but it is held to be forcible knowledge if the female discontinue her resistance out of fear of death, or be rendered incapable of it by the giving of narcotic drugs, or be under the age of puberty.

Three questions relating to this subject have at various times been discussed, and they all deserve a brief notice; 1. Whether the presence of the venereal disease in the female violated, is a proof in favour of or against her accusation? If, on examination, the marks of this disease be found recent, it will be proper to consider them as corroborating circumstances; it is necessary, however, to remark that the symptoms of venereal infection do not commonly make their appearance until three days after receiving it, while the examination should be made within that time; should the appearances indicate any thing like a disease of long standing, they must, of course, tend to weaken the complaint of the female.

2. Can a female be violated during sleep without her knowledge? If the sleep have been caused by powerful narcotics, by intoxication, or if syncope, or excessive fatigue, be present, it is possible that this may occur, and it ought then to be considered, to all intents, a rape. In such cases the quantity of stupifying drugs administered may be so great as to render her unable, even if awakened by the violence, to withdraw from it.

3. Does pregnancy ever follow rape? On this question a great diversity of opinion has existed. It was formerly supposed that a certain degree of enjoyment was necessary in order to cause conception, and accordingly the presence of pregnancy was deemed to exclude the idea of a rape. Late writers, however, urge that the functions of the uterine system are, in a great degree, independent of the will, and that there may be physical constraint on those organs sufficient

to induce the required state, although the will itself is not consenting. We do not know, nor shall probably ever know, what is necessary to cause conception, but if we reason from analogy, we shall certainly find cases where females have conceived while under the influence of narcotics, of intoxication, and even of asphyxia, and consequently without knowing or partaking of the enjoyment that is insisted on. Pregnancy, then, is not incompatible with the idea of rape under the limitations laid down. Several writers on this subject are, however, of a different opinion, and particularly Dr. Bartley, who goes so far as to recommend that pregnancy shall be considered a proof of acquiescence, and that, in order to ascertain this, the punishment of the criminal be delayed till the requisite time.

"It was formerly supposed," says East, "that if a woman conceived, it was no rape, because that showed her consent; but it is now admitted on all hands, that such an opinion has no sort of foundation either in reason or law."—*Vol. I. 445. Beck's Med. Jurisp. 88.*

The punishment of this crime is now regulated by 4 & 5 Vict., c. 56, § 3, which provides, transportation for life.

RAPINE, the taking a thing against the owner's will, openly or by violence.

RAPTU HEREDIS, a writ for taking away an heir holding in socage; of which there are two sorts, one when the heir is married, the other when he is not. *Reg. Orig. 163.*

RASURE, the act of scraping or shaving.

Rasure of a deed, so as to alter it in a material part, without consent of the party bound by it, &c., will make the same void; and if it be rased in the date after delivery, it is said it goes through the whole. Where a deed by rasure, addition, or alteration becomes no deed, the defendant may plead *non est factum*. *5 Rep. 23.*

RATE, a valuation of an estate, or the appointing or setting down how much every one shall pay or be charged with to any tax.

RATE-TITHE, when any sheep, or other cattle, are kept in a parish for less time than a year, the owner must pay tithe for them *pro rata* according to the custom of the place. *F. N. B. 51.*

RATIFICATION, confirmation.

RATIHABITIO, confirmation, agreement, consent.

RATIO, an account, a rule of proportion; also, a cause, or giving judgment therein.

Ratio est formalis causa consuetudinis.—(Reason is the formal cause of custom.)

Ratio est legis anima, mutata legis ratione mutatur et lex. 7 Co. 7.—(Reason is the soul of law; the reason of law being changed, the law is also changed.)

Ratio est radius divini luminis. Co. Lit. 232.—(Reason is a ray of the divine light.)

Ratio et auctoritas duo clarissima mundi lumina. 4 Inst. 320.—(Reason and authority, the two brightest lights of the world.)

Ratio legis est anima legis. Jenk. Cent. 45.—(The reason of law is the soul of law.)

Ratio potest allegari deficiente lege. Sed ratio vera et legalis et non apparens. Co. Lit. 191.—(Reason may be alleged when law is defective. But it must be true and legal reason, and not apparent.)

RATIONABILE ESTOVERIUM, alimony.

RATIONABILIBUS DIVISIS, an abolished writ which lay where two lords, in divers towns, had seignories adjoining, for him who found his waste by little and little to have been encroached upon, against the other, who had encroached, thereby to rectify their bounds.

RATIONABILI PARTE, an old writ of right for lands, &c.

RATIONABILI PARTE BONORUM, a writ which lay for a wife after her husband's death, against the executors of the husband, for her third or reasonable part of his goods, after debts and funeral charges paid. *F. N. B. 222.*

RATIONABILIS DOS, a widow's thirds, or reasonable dower.

RAVISHMENT, violation, forcible constupration. *SEE ABDUCTION.*

RAVISHMENT DE GARD (ravishment of ward), an abolished writ which lay for a guardian by knight's service or in socage, against a person who took from him the body of his ward. *F. N. B. 140.*

RE-AFFORESTED, where a de-afforested forest is again made a forest.

READING IN, the title of a person admitted to a rectory or other benefice, will be divested, unless within two months after actual possession he publicly read in the church of the benefice, upon some Lord's day, and at the appointed times, the morning and evening service, according to the book of common prayer; and afterwards, publicly before the congregation, declare his assent to such book; and also publicly read the thirty-nine articles in the same church, in the time of common prayer, with declaration of his assent thereto; and, moreover, within three months after his admission, read upon some Lord's day in the same church, in the presence of the congregation, in the time of divine service, a declaration by him subscribed before the ordinary, of conformity to the liturgy, together with the certificate of the ordinary of its having been so subscribed. *3 Step. Com. 81.*

REAL ACTION, one brought for the specific recovery of lands, tenements, and hereditaments. There are only three extant, viz., dower, dower *unde nihil habet*, and *quare impedit*.

Among the civilians, real actions otherwise called *vindications*, are those in which a man demanded something that was his own, and which were founded on dominion, or *ius in re*.

The real actions of the Roman law were not like the real actions of the common law, confined to real estate, but they included personal as well as real property. But the same distinction as to classes of remedies and actions equally pervades the common law as it does the civil law. Thus we have, in the common law, the distinct classes of

real actions, personal actions, and mixed actions. The first, embracing those which concern real estate where the proceeding is purely *in rem.*; the next, embracing all suits *in personam* for contracts and torts; and the last, embracing those mixed suits where the person is liable by reason of and in connexion with property. *Story's Const. Laws*, 781.

REAL BURDEN, a condition imposed on an estate, which is effectual against creditors and heirs. *Scotch Phrase*.

REAL CHATTELS. See **CHATTELS**.

REAL ESTATE, landed property, including all estates and interest in lands which are held for life or for some greater estate, and whether such lands be of freehold or copyhold tenure.

REALITY. See **PERSONALITY**.

REAL LAWS, laws purely real, directly and indirectly regulate property, and the rights of property, without intermeddling with or changing the state of the person.

In regard to laws purely real, Boullenois lays down the rule in the broadest terms, that they govern all real property within the territory, but have no extension beyond it. *Les lois réelles n'ont point d'extension directe ne indirecte hors la juridiction et la domination du législateur. Story's Const. Laws*, 610.

REAL RIGHT, the right of property, *jus in re*, the person having which right may sue for the subject itself. A personal right, *jus ad rem*, entitles the party only to an action for performance of the obligation.

REAL THINGS, things substantial and immovable, and the rights and profits annexed to or issuing out of them.

REAL WARRANTICE, an infeoffment of one tenement given in security of another. *Scotch Phrase*.

REALTY, thing real; landed property, &c.

REASON, the very life of law, for when the reason of a law once ceases, the law itself generally ceases, because reason is the foundation of all our laws. *Co. Lit.* 97.

REASONABLE AID, a duty claimed by the lord of the fee of his tenants, holding by knight service, to marry his daughter, &c.

REASONABLE CAUSE, a proper consideration.

REASONABLE PART. See **RATIONABILI PARTE**.

RE-ASSURANCE, a contract that a first insurer enters into in order to release himself from a risk which he may have incautiously undertaken by throwing it upon some other under-writer. Such contracts are prohibited by 19 Geo. II., c. 37, § 4, except in the event of the original insurer's insolvency, bankruptcy, or death, when a re-assurance may lawfully be made by himself, or his representatives or assigns, provided the transactions be declared by the policy to be of that description. Re-assurance is not to be confounded with double insurance: which see.

RE-ATTACHMENT, a second attachment of him who was formerly attached and dismissed the court without day, by the not

coming of the justices, or some such casualty. *Reg. Orig.* 35.

REBATE, discount; reducing the interest of money in consideration of prompt payment.

REBELLION, the taking up of arms traitorously against the Crown, whether by natural subjects or others, when once subdued; also, the disobedience to the process of the courts.

REBELLION, commission of one of the abolished processes of contempt in the High Court of Chancery. *Orders*, August. 21, 1841, clause 6.

REBELLIOUS ASSEMBLY, a gathering of twelve persons or more, intending, going about, or practising unlawfully and of their own authority, to change any laws of the realm, or to destroy the enclosure of any park or ground enclosed; banks of fish-ponds, pools, conduits, &c., to the intent the same shall remain void, or that they shall have way in any of the said grounds; or to destroy the deer in any park, fish in ponds, coney in any warren, dove-houses, &c.; or to burn stacks of corn; or to abate rents, or prices of victuals, &c.

REBUTTER [*repellere*, Lat., to put back or bar], the answer of a defendant to a plaintiff's surrejoinder.

RECAPTION, the taking a second distress of one formerly distrained, during the plea, grounded on the former distress, and it is a writ to recover damages for him, whose goods being restrained for rent in service, &c., are distrained again for the same cause, pending the plea in the county court or before the justices. *F. N. B.* 71.

It is also a species of remedy by the mere act of the party injured. This happens when any one has deprived another of his property, in goods and chattels personal, or wrongfully detains one's wife, child, or servant, in which case the owner of the goods, and the husband, parent, or master, may lawfully claim and retake them, wherever he happens to find them, so it be not in a riotous manner, or attended with a breach of the peace, and so that he favour not the thief.

Receditur à placitis juris potius quam injuriæ et delicta maneant impunita. Bacon.—(It is receded more from pleas of right than injury, and crimes may remain unpunished.)

RECEIPT or RECEIT, an acknowledgment in writing of having received a sum of money, or other valuable consideration; it is a voucher either of an obligation or debt discharged, or of one incurred.

Previously to 1833, all receipts for sums of 2*l.*, and under 5*l.*, were charged with a stamp duty of two-pence, but the act 3 & 4 Will. IV., c. 23, exempts all receipts for sums under 5*l.* from the duty.

RECEIVER, one to whom anything is communicated by another. Also, an officer of the Court of Chancery appointed to collect rents, &c., pending a suit. Receivers are usually appointed in suits concerning the estates of infants, against executors, and between partners for the purpose of winding up

the concern. A practising barrister may be a receiver, but a solicitor in the cause cannot, unless by consent, and he will act without salary; nor can the receiver general of a county; for the Crown might, by its prerogative, sweep away the whole of his property; nor can peers, next friends of infant plaintiffs, nor trustees, be receivers. The allowance to the receiver depends on the degree of difficulty or facility experienced in the collection; the usual allowance is 5*l.* per cent. on the gross rental. The security required by the court is, that a receiver shall enter into a recognizance jointly with two sureties, in double the amount of the yearly value of the estate to be collected. He passes his accounts in the masters' office, and pays the balance unto the office of the accountant general. At the termination of his office, he should apply to have his recognizance vacated and for his own discharge from the receiver, ship.

RECEIVER OF THE FINES, an officer who receives the money of all such as compound with the Crown on original writs sued out of Chancery.

RECEIVER GENERAL OF THE DUCHY OF LANCASTER, an officer of the Duchy Court, who collects all the revenues, fines, forfeitures, and assessments within the duchy.

RECEIVER GENERAL OF THE PUBLIC REVENUE, an officer appointed to every county to receive the taxes granted by Parliament, and remit the money to the treasury.

RECEIVER OF STOLEN PROPERTY. By 7 & 8 Geo. IV., c. 29, § 54, it is provided, that if any person shall knowingly receive any chattel, money, or valuable security or other property whatever, the stealing or taking whereof shall amount to felony, either by common law or by virtue of that act, every such receiver shall be guilty of felony, and may be indicted either as an accessory after the fact, or for a substantive felony, and, however convicted, shall be liable, at the discretion of the court, to be transported for a term not exceeding fourteen years nor less than seven years, or imprisoned (with or without hard labour and solitary confinement) for a term not exceeding three years, and if a male, to be once, twice, or thrice whipped, if the court think fit, in addition to the imprisonment. By § 55, if any person shall knowingly receive any chattel, money, valuable security, or other property whatever, the stealing, taking, obtaining, and converting whereof is made an indictable misdemeanour by the act, every such receiver shall be guilty of a misdemeanour and transported for seven years or imprisoned (with or without hard labour and solitary confinement) for not more than two years, and if a male, once, twice, or thrice whipped, if the court think fit, in addition to the imprisonment. By § 60, where the stealing of any property whatever is punishable by that act on summary conviction, either for every offence or for the first and second offences only, or for the first offence

only, the guilty receiver shall be liable for every first, second, or subsequent offence of receiving, to the forfeiture and punishment to which a person guilty of a first, second, or subsequent offence, of stealing or taking such property, is by the said act made liable.

RECITAL, the rehearsal or making mention in a deed or writing of something which has been done before. 1. *Lill. Abr.* 416.

RECLAIMED ANIMALS, those that are made tame by art, industry, or education, whereby a qualified property may be acquired in them.

RECLAIMING, the action of a lord pursuing, prosecuting, and recalling his vassal, who had gone to live in another place, without his permission. Also, for the demanding of a thing or person to be delivered up or surrendered to the prince or state it properly belongs to, when by an irregular means, it has come into the possession of another.

RECLAIMING BILL, a petition of appeal against the judgment of any lord ordinary or the Court of Sessions in Scotland.

RECOGNITION, an acknowledgment.

RECOGNITIONE ADNULLANDA PER VIM ET DURITIEM FACTA, a writ to the justices of the Common Bench for sending a record touching a recognizance, which the recognizer suggests was acknowledged by force and duress; that if it so appear, the recognizance may be disannulled. *Reg. Orig.* 183.

RECOGNITORS, the jury impannelled in an assize, so called because they acknowledged a disseisin by their verdict. *Bract.* 15.

RECOGNIZANCE, an obligation of record, which a man enters into before some court of record, or magistrate duly authorized, with condition to do some particular act; as to appear at the assize, to keep the peace, to pay a debt, or the like. It is somewhat like an ordinary bond, the difference being that a bond is the creation of a fresh debt, or obligation *de novo*; the recognizance is an acknowledgment of a former debt upon record.

RECOGNIZEE, he to whom one is bound in a recognizance.

RECOGNIZOR, he who enters into a recognizance.

RE-COMPENSATION. Where a party sues for a debt, and the defendant pleads compensation, the plaintiff may allege a compensation on his part, and this is called a re-compensation. *Scotch Word.*

RECORD, a memorial or remembrance; an authentic testimony in writing, contained in rolls of parchment, and preserved in a court of record.

There are three kinds of records, viz., (1) *judicial*, as an attainder; (2) *ministerial*, on oath, being an office or inquisition found; (3) by way of *conveyance*, as a deed enrolled.

RECORD, *conveyances by*, extraordinary assurances, as private acts of Parliament, and royal grants.

RECORD, *courts of*, those where the judicial acts and proceedings are enrolled in parch-

ment for a perpetual memorial and testimony; which rolls are called the records of the court, and are of such high and supereminent authority, that their truth is not to be called in question. Every court of record has authority to fine and imprison for contempt of its authority.

RECORD, *debts of*, those which appear to be due by the evidence of a court of record, such as a judgment of recognizance, &c.

RECORD, *trial by*. If a record be asserted on one side to exist, and the opposite party deny its existence under the form of traverse, that there is no such record remaining in court as alleged, and issue be joined thereon, this is called an issue of *nul tiel* record; and the court awards in such a case a trial by inspection and examination of the record. Upon this, the party affirming its existence is bound to produce it in court on a day given for the purpose; and if he fail to do so, judgment is given for his adversary. The trial by record is not only in use when an issue of this kind happens to arise for decision, but it is the only legitimate mode of trying such issue, and the parties cannot put themselves upon the country. *Step. Plead.* 112.

RECORDARI FACIAS LOQUELAM [abbrev. *re. fa. lo.*], an original writ, in the nature of a *certiorari*, issuing out of Chancery, addressed to a sheriff to remove a cause depending in an inferior court to a superior court; and it is called a *recordari*, because it commands the sheriff to make a record of the plaint in the county court, and then to send up the cause. *F. N. B.* 71.

Recorda sunt vestigia vetustatis et veritatis. 2 Rol. Rep. 296.—(Records are vestiges of antiquity and truth.)

RECORDER, a person whom the mayor and other magistrates of any city or town corporate, having jurisdiction, and the court of record within their precincts by the royal grant, associate unto them for their better direction in matters of justice and proceedings according to law. He is usually a barrister of some standing.

RECORDER OF LONDON, one of the justices of oyer and terminer, and a justice of the peace of the *quorum* for putting the laws in execution for the preservation of the peace and government of the city: and being the mouth of the city, he delivers the sentences and judgments of the courts therein, and also certifies and records the city customs, &c. He is chosen by the Lord Mayor and aldermen, and attends the business of the city on any warning by the Lord Mayor, &c.

RECOVERY, the obtaining a thing by judgment or trial.

A *true* recovery is an actual or real recovery of any thing, or the value thereof, by judgment; as if a man sue for any land or other thing movable or immovable, and gain a verdict or judgment.

A *feigned* recovery was a certain form or course set down by law to be observed for the better assuring lands or tenements; and

the effect thereof was to discontinue and destroy estates tail, remainders, and reversions, and to bar the entails thereof. Abolished by 3 & 4 Wm. IV., c. 74. See **TAIL**.

RECREANT, yielding. See **CRAVEN**.

RECOUPE, the keeping back or stopping something which is due; discount.

RECTA PRISA REGIS, the king's writ to prisage, or taking of one butt or pipe of wine before, and another behind the mast, as a custom for every ship laden with wines. See **PRISAGE**.

RECTITUDO, right or justice; legal dues, tribute, or payment.

RECTO, *breve de*, a writ of right, which was of so high a nature, that as other writs in real actions were only to recover the possession of the land, &c., in question, this aimed to recover the seisin and the property, and thereby both the rights of possession and property were tried together.

It had two species: (1) writ of right patent, so called, because it was sent *open*, and was the highest writ, lying for him who had a fee simple in the lands or tenements sued for, against tenant of the freehold at least, and in no other case; this writ was likewise called *breve magnum de recto*: (2) writ of right close, which was brought where one held lands and tenements by charter in ancient demesne, in fee simple, fee tail, or for term of life, or in dower, and was disseised. *Co. Lit.* 153. Abolished by 3 & 4 Wm. IV., c. 27.

RECTO DE ADVOCATIONE ECCLESIAE, a writ which lay at common law, where a man had right of advowson of a church, and the parson dying, a stranger had presented. *F. N. B.* 30.

RECTO DE CUSTODIA TERRÆ ET HÆREDIS, a writ of right of ward of the land and heir. Abolished.

RECTO DE DOTE, a writ of right of dower, which lies for a woman who has received part of her dower, and demands the residue, against the heir of the husband or his guardian. See **DOWER**.

RECTO DE DOTE UNDE NIHIL HABET, a writ of right of dower whereof she has nothing, which lies in case where the husband, having divers lands or tenements, has assured no dower to his wife, and she thereby is driven to sue for her thirds against the heir or his guardian. See **DOWER**.

RECTO QUANDO (or QUIA) DOMINUS REMISIT CURIAM, a writ of right, when or because the lord has remitted his court, which lay where lands or tenements in the seignior of any lord were in demand by a writ of right. *F. N. B.* 16.

RECTO DE RATIONABILE PARTE, a writ of right of the reasonable part which lay between privies in blood, as brothers in gavelkind, sisters, and other coparceners, for land in fee simple. *F. N. B.* 9.

RECTO SUR DISCLAIMER, an abolished writ on disclaimer.

RECTOR, a governor; he that has that part of the revenues of a church, which heretofore

was appropriated to some of the monasteries; or one who has the whole revenues.

RECTOR SINECURE, one without cure of souls.

RECTORIAL TITHES, great or predial tithes.

REGTORY, a spiritual living, composed of land, tithe, and other oblations of the people, separate or dedicate to God, in any congregation for the service of His church there, and for the maintenance of the governor or minister thereof, to whose charge the same is committed. *Spel.*

RECTUM, right; also, a trial or accusation. *Bract.*

RECTUM ESSE, to be right in court.

RECTUM ROGARE, to ask for right; to petition the Judge to do right.

RECTUM, STARE AD, to stand trial, or abide by the sentence of court.

RECTUS IN CURIA, one who stands at the bar of a court, and no accusation is made against him; also, said of an outlaw when he has reversed his outlawry.

Recuperatio, i.e., ad rem, per injuriam extortam sive detentam, per sententiam judicis restitutio. Co. Lit. 145.—(Recovery, that is, restitution to a thing, by sentence of a judge, from extortion or detention.)

Recuperatio est alicujus rei in causam alterius adductæ per judicem acquisitio.—(Recovery is the acquisition, by sentence of the Judge, of anything adduced in the cause of another.)

Recurrendum est ad extraordinarium quando non valet ordinarium.—(We must have recourse to what is extraordinary, when what is ordinary fails.)

RECUSANTS, persons who wilfully absent themselves from their parish church, and on whom penalties were imposed by various statutes passed during the reigns of Elizabeth and James I.

RECUSATIO JUDICIS, a refusal of a Judge upon any suspicion of partiality. *Civil Law Phrase.*

RED [*ræd*, Sax.], advice.

RED-BOOK OF THE EXCHEQUER [*liber rubens scaccarii*], an ancient record, wherein are registered the names of those who held lands *per baroniam* in the time of Henry II. *Ryley*, 667.

REDDENDUM, a clause reserving rent in a lease, whereby a lessor reserves some new thing to himself out of that which he granted before: it commonly and properly succeeds the *habendum*, and is usually made by the words "yielding and paying," or similar expressions.

In every good reservation these things must always concur:—1. It must be by certain and apt words. Thus, a lease for years, reserving rent "after the rate" of 18*l.* a year, is void for uncertainty. 2. It must be of some other thing issuing or coming out of the thing granted, and not a part of the thing itself, nor of some thing issuing out of another thing. 3. It must be of such thing, a thing whereunto the grantor may have resort to distrain. 4. It must be made to one of the grantors, and not to a stranger to the deed. *Woodf. Land. and Tent.* 77.

Reddendo singula singulis. 5 Co. 7, b.—(By giving what is single to what is single.)

Reddere, nil aliud est quam acceptum restituere: seu, reddere est quasi retrò dare: et redditur dicitur a redeundo, quia retrò it. Co. Lit. 142.—(To restore, is to yield back nothing than what was taken: or to restore, is, as it were, to make restitution, or to give back again: and it is restored, is called from returning, because it goes back again.)

REDIDIT SE (he has rendered himself), a principal, who renders himself to prison in discharge of his bail.

REDDITARIUS, a renter.

REDDITARIUM, a rental of an estate or manor.

REDDITION, a surrendering or restoring; also, a judicial acknowledgment that the thing in demand belongs to the demandant, and not to the person so surrendering.

Redditus cæcus et siccus. 6 Co. 58.—(Rent uncertain and barren.)

REDEEMABLE RIGHTS, those which return to the conveyor or disposer of land, &c., upon payment of the sum for which such rights are granted.

RE-DELIVERY, a yielding and delivery back of a thing.

RE-DEMISE, a regranting of lands demised or leased.

REDEMPTION, a ransom or commutation.

REDEMPTION, equity of. See **EQUITY OF REDEMPTION**.

REDHIBITION [*redhibitio*], an action allowed to a buyer, by which to annul the sale of some movable, and oblige the seller to take it back again, upon the buyers finding it damaged, or that there was some deceit, &c. *Civil Law.*

RE-DISSEISIN, a disseisin made by him, who once before was bound and adjudged to have disseised the same person of his lands or tenements. *F. N. B.* 188.

REDITUS ALBI, white rents, or rents paid in silver.

REDITUS ASSISUS, a set or standing rent.

REDITUS CAPITALES, chief rents paid by freeholders, to go quit of all other services.

REDITUS NIGER, black mail; rents paid in grain or base money.

REDITUS QUIETI, quit rents: which see.

REDITUS SICCUS, a rent seck, or barren; the owner of which has neither seignory nor reversion, nor any express power of distress reserved by him.

REDMANS or RADMANS, men who by the tenure or custom of their lands, were to ride with, or for, the lord of the manor, about his business. *Domesday.*

REDUBBERS, those that bought stolen cloth and turned it into some other colour or fashion, that it might not be known again. 3 *Inst.* 134.

REDUCTION, an action for the purpose of repealing or rendering null and void some deed or claim. *Scotch Term.*

REDUCTION IMPROBATION, the reduction is a rescissory action by which deeds, services, decrees, or illegal acts by any body corporate may be rendered void. The ac.

tion of reduction has a certification which renders the deed called for, and not produced, incapable of receiving any effect until it be produced. The action of improbation is founded on actual forgery, and the certification thereon has the effect of rendering the deed called for and not produced, for ever void and null. The junction of two actions, which form what is called the reduction improbation, confers on the simple reduction all the efficacy of the improbation, and secures the person who uses it from all future trouble from the deed called for, if it be not produced in the action. *Scotch Action.*

RE-ENTRY, the resuming or re-taking that possession which any one has lately foregone.

RE-ENTRY, *proviso for*, a clause usually inserted in leases, that upon non-payment of rent, &c., the term shall cease. *Wood, Land. and Tent.* 239.

REEVE, [*gereva*, Sax.], a steward or bailiff.

RE-EXCHANGE, the amount for which a bill of exchange can be purchased in the country, where the acceptance is made, drawn upon the drawer or indorser in the country, where he resides, which will give the holder of the original bill a sum exactly equal to the amount of that bill at the time when it ought to be paid, or when he is able to draw the re-exchange bill, together with his necessary expenses and interest, for that is precisely the sum which the holder is entitled to receive, and which will indemnify him for its non-payment.

It is supposed to be the Ghibelins, driven out of Italy by the faction of the Guelphs, and sheltered at Amsterdam, who first established the custom of re-exchange, on the pretence of the interest, damages, and expenses they underwent, when the bills given them for the effects they had been obliged to abandon—were not accepted—but came to be protested. *Story on Bills*, 470.

RE-EXTENT, a second extent on lands or tenements, on complaint that the former was partially made, &c.

RE. FA. LO., the abbreviation of *recordari facias loquelum*: which see.

REFARE, to bereave, take away, rob.

REFEREE, one to whom anything is referred; an arbitrator.

REFERENCE, the sending of any matter of enquiry by the Court of Chancery to a master in ordinary, in order to examine it and make a report to the court. References to compute, &c., are frequently made to the masters of the Courts of Common Law. As to reference to arbitration, see *ARBITRATION*.

REFERENDARY, one to whose decision anything is referred.

REFORM ACT, 2 Wm. IV., c. 45.

REFUSAL, where one has by law, a right and power of having or doing something of advantage, and he declines it.

REGALE EPISCOPORUM, the temporal rights and privileges of a bishop.

REGAL FISHES, whales, sturgeon, and porpoises.

REGALE, the prerogatives of monarchy.

REGALIA, the royal rights of a sovereign, which the civilians reckon to be six; viz., power of judicature, of life and death, of war and peace, masterless goods, as waifs, estrays, &c., assessments and minting of money. See *MAJORA* and *MINORA REGALIA*.

REGALIA FACERE, to do homage or fealty to the king by a bishop when he is invested with the regalia.

REGALITY, a territorial jurisdiction in Scotland, granted with land from the Crown.

REGARD, *court of*, a tribunal held every third year, for the lawing or expeditation of dogs, to prevent them from running after deer.

REGARD OF THE FOREST, the oversight or inspection of it, or the office and province of the regarder, which is to go through the whole forest, and every bailiwick in it, before the holding of the sessions of the forest, or justice seat, to see and enquire after trespasses, and for the survey of dogs.

REGARDANT VILLEIN, or REGARDANT TO THE MANOR, an ancient servant or retainer, who did the base services within the manor. 1 *Inst.* 120.

REGARDER OF A FOREST [*regardator forestæ*], an ancient officer of the forest, whose duty it was to take a view of the forest hunts, and to inquire concerning trespasses, offences, &c.

REGE INCONSULTO, a writ issued from the Sovereign to the Judges, not to proceed in a cause which may prejudice the Crown, until he is advised.

REGENT, one invested with vicarious royalty. *Reges dicuntur clerici.* Dav. 4.—(Kings are called clerks.)

Reges, sacro oleo uncti, sunt spiritualis jurisdictionis capaces. 5 Co. Eccle. L.—(Anointed kings are capable of spiritual jurisdiction.)

REGEST [*registum*, Lat.], a register. *Milton.* *Regia dignitas est indivisibilis, et quælibet alia derivativa dignitas est similiter indivisibilis.* 4 *Inst.* 243.—(The kingly power is indivisible, and whatever other derivative power is alike indivisible.)

REGIAM MAJESTATEM, a collection of the ancient laws of Scotland. It is said to have been compiled by order of David I., King of Scotland, who reigned from 1124 to 1153.

REGICIDE, murderer of a Sovereign.

REGIO ASSENSU, a writ whereby the Sovereign gives his assent to the election of a bishop. *Reg. Orig.* 294.

Regis ad exemplum totus componitur orbis. 7 *Inst.* 193.—(The whole earth is composed by the example of the kings.)

REGISTER [*gister*, Fr., to lie down in a bed, &c.], a public book serving to enter and record memoirs, acts, and minutes, to be had recourse to occasionally, for the justifying of matters of facts.

By several acts of Parliament, all deeds and wills concerning estates within the north, east, and west ridings of York, or within the

town and county of Kingston-upon-Hull, or within the county of Middlesex, or the Bedford Levels, are directed to be registered. A memorial of a will should be registered within six months after the death of the deviser or testatrix dying within Great Britain, or within the space of three years after his or her death, dying upon the sea, or in parts beyond the seas. Wills registered within the allowed time will prevail over even a prior registered conveyance.

If the devisee of an estate within the east or west ridings of York or Kingston-upon-Hull, be disabled to exhibit a memorial within the time limited, by the suppression of the will or other inevitable difficulty, then a memorial entered of such impediment within six months after the death of such deviser or testatrix who shall die within Great Britain, or within three years after the decease of such person who shall die upon the sea, or beyond the seas; and a memorial of such will also registered within six months after the removal of such impediment, will protect the devisers against any purchaser subsequently to the will.

But as to estates in the north riding of York, then in case of the concealment or suppression of any will or devise, any purchaser shall not be disturbed or defeated in his purchase, unless the will be actually registered within three years after the death of the deviser.

As to estates in the county of Middlesex, it is provided that an entry of the impediment within two years after the death of any deviser or testatrix who shall die in Great Britain, or within four years after the decease of such person who shall die upon the sea or beyond the seas; and a registry of a memorial of the will within six months after the removal of the impediment shall be good. But no concealed will is to affect a purchaser unless it be registered within five years after the death of the testator.

No judgment, statute, or recognizance (other than such as shall be entered into in the name and upon the proper account of the Crown) shall bind estates in Middlesex, but from the time that a memorial thereof shall be duly registered. As to estates in the east and west ridings of York and Kingston-upon-Hull, the registry of judgments, statutes, or recognizances within thirty days after the acknowledging or signing thereof, shall bind all the lands of the defendant at the time of such acknowledgment or signing, but in the north riding the time is limited to twenty days. The appointment of an assignee to an insolvent's estate is to be registered by 1 & 2 Vict., c. 110, § 46. Deeds of appointment must be registered. But a legacy charged on land needs not registry. The non-registry of a lease is not cured by registering an assignment in which such lease is recited.

None of the acts extends to copyhold estates or to leases at rack rents, or not exceeding twenty-one years, where the actual

possession and occupation go along with the lease, or to any of the chambers in Serjeant's Inn, the Inns of Court, or the Inns of Chancery.

A person having the legal estate, as a mortgagee, and advancing more money, without notice of a second mortgage duly registered, shall hold against the second mortgage till he is satisfied all the money he has advanced. P

A person purchasing without notice, and obtaining the legal estate, shall not be prejudiced by a prior equitable incumbrance, which was duly registered previously to his purchase.

A person buying an estate with notice of a prior incumbrance not registered shall in equity be bound by such incumbrance, although he has at law obtained a priority by registering his deed.

A purchaser from a devisee should not complete his contract till the will is duly registered; for if any person were to purchase of the heir at law *bona fide*, and without notice of the will, and register his conveyance before the registry of the will, he would be preferred to the purchaser from the devisee. But if the vendor be both heir at law and devisee, the non-registry of the will is immaterial; for if he sell to any subsequent purchaser, it must either be in the character of heir at law or devisee. If he sell in this character, the second purchaser must have notice of the will; if he contract in that, the first purchaser has already procured the legal estate.

If the vendor claim a leasehold estate, either as executor or legatee, the purchaser needs not insist upon the testator's will being registered, because no subsequent purchaser can procure a title without notice of the will. Letters of administration are never registered.

Every memorial of a deed or conveyance is directed by the acts to be under the hand and seal of some, or one, of the grantors or grantees, his or their heirs, executors, or administrators, guardians, or trustees, attested by two witnesses, one whereof to be one of the witnesses to the execution of the deed; which witness shall upon his oath, before the registrar, prove the signing and sealing of the memorial, and the execution of the deed mentioned in such memorial.

Every memorial must contain, first, the day of the month and year when the deed &c., bears date, and the names and additions of all the parties to it, and of the deviser or testatrix of a will, and all the witnesses to such deed, &c., and the places of their abode; and, secondly, the houses, manors, lands, tenements, and hereditaments, contained in such deed, &c., and the names of the parishes, &c., where any such estates lie that are comprised in or affected by such deed &c., in such manner as the same are explained or mentioned in such deed, &c., or to the same effect. 3 Sng. V. & P. 345. See BIRTHS.

REGISTRY, in commercial navigation, the registration or enrolment of ships at the Custom House, so as to entitle them to be classed among, and to enjoy the privileges of, British built ships.

The registry of ships appears to have been first introduced into this country by the Navigation Act, 12 Car. II., c. 18, A. D. 1660; several provisions were made with respect to it by the 7 & 8 Will. III., c. 22, and the whole was reduced into a system by the 27 Geo. III., c. 19.

It may be laid down in general that a vessel, in order to be admitted to registry, and consequently to enjoy the privileges and advantages that exclusively belong to a British ship, must be the property of her Majesty's subjects in the United Kingdom or some of its dependencies, and that it must have been built in the said United Kingdom, &c., or been a prize vessel legally condemned, or a vessel legally condemned for a breach of the same laws.

The great, and perhaps the only original object of the registration of ships, was to facilitate the exclusion of foreign ships from those departments in which they were prohibited from engaging by the navigation laws, by affording a ready means of distinguishing such as were really British. It has also been considered advantageous to individuals, by preventing the fraudulent assignment of property in ships; but Lord Tenterden has observed, in reference to this supposed advantage, that "the instances in which fair and honest transactions are rendered unavailable through a negligent want of compliance with the forms directed by these and other statutes requiring a public register of conveyances, make the expediency of all such regulations, considered with reference to private benefit only, a matter of question and controversy." *Law of Shipping*, part i. c. 2.

The existing regulations as to the registry of ships are embodied in the act 3 & 4 Will. IV., c. 55. *McCulloch's Comm. Dict.*

REGISTRAR or **REGISTRARY**, an officer whose business is to write and keep a register.

REGISTRAR GENERAL, an officer appointed by the Crown under the Great Seal, to whom, subject to such regulations as shall be made by a principal Secretary of State, the general superintendence of the whole system of registration of births, deaths, and marriages is entrusted.

REGISTRATION, act of inserting in the register.

REGIUS PROFESSOR, a royal professor, a reader of lectures in the universities. Henry VIII. founded in each of our universities five, viz., Divinity, Greek, Hebrew, Law, and Physic.

REGNANT, reigning, having regal authority.

REGNI POPULI, a name given to the people of Surrey and Sussex, and on the sea coasts of Hampshire. *Blount*.

REGNUM ECCLESIASTICUM, the ecclesiastical kingdom.

Regnum non est divisibile. Co. Lit. 165.—(The kingdom is not divisible.)

REGRATING, buying corn, &c., in any market, and selling it again in or near the same place. It was illegal, but now no longer so. 7 & 8 Vict., c. 24.

REGRESS, *letters of*, they were granted by the superior of lands mortgaged to the wadsetter or mortgagor. Their object was this: by the wadset or mortgage, the mortgagor was completely divested, and when he redeemed, he appeared to claim an entry from the superior as a stranger, and the superior was no more bound to receive the mortgagor than he would have been forced to receive any third party; to remedy this, letters of regress were granted by the superior under which he became bound to re-admit the mortgagor at any time when he should demand entry. *Scotch Practice*. See 20 Geo. II., c. 50.

REGULARS, those who profess and follow a certain rule of life (*regula*), and observe the three approved vows of poverty, chastity, and obedience.

Regula peccatis quæ pœnas irrogat æquas. Gilb. 213.—(The rule which sets equal penalties on sins.)

Regulariter non valet pactum dare mea non alienanda. Co. Lit. 223.—(Regularly a compact, not to alienate my property, is not binding.)

REHABERE FACIAS SEISINAM, a judicial writ which lay when the sheriff in the *habere facias seisinam* had delivered more than he ought. *Reg. Judic.* 13.

REHABILITATE, to restore a delinquent to former rank, privilege, or right; to qualify again; to restore a forfeited right.

REHEARING. If either party is dissatisfied with a decree or decretal order in Chancery, he may apply to have the cause reheard before the Judge pronouncing the same. The petition for rehearing should be presented after the decree is passed and entered, and before it is enrolled. The petition must be signed by two counsel, who also certify that it is a proper case for rehearing. A deposit of 20*l.* for costs must be made.

By 89th order of 8th May, 1845, any defendant waiving all objection to the order to take the bill *pro confesso*, and submitting to pay such costs as the court may direct, may, before enrolment of the decree, have the cause reheard upon the merits stated in the bill, the petition of rehearing being signed by counsel as other petitions of rehearing.

REIF [*refian*, Sax.], robbery. *Cowell*.

RE-INSURANCE or **RE-ASSURANCE**, a contract by which a first insurer relieves himself from the risks which he has undertaken, and devolves them upon other underwriters, called re-insurers or re-assurers: but see 19 Geo. II., c. 17.

Reipublicæ interest voluntates defunctorum effectum sortiri.—(It concerns the state that the wills of the dead should have their effect.)

REJOINER, a defendant's answer to a plaintiff's replication.

RELATION, where two different times or other things are accounted as one, and by some act done, the thing subsequent is said to take effect by relation from the time preceding. Thus letters of administration relate to the intestate's death, and not to the time when they were granted.

Relatio est fictio juris et intenta ad unum. 3 Co. 28.—(Reference is a fiction of law, and intent to one thing.)

Relatio semper fiat ut valeat dispositio, et quando ad duas res referri potest dispositio, ita quod secundum unam vitatur et secundum alteram utilis est, tunc facienda est relatio ut valeat dispositio. 6 Co. 76.—(Let reference be made always in such a manner that the disposition may avail: and when disposition is referable to two things, so that by one it may be vitiated, and by the other it may stand, then let the reference be made to that by which the disposition may avail.)

Relativorum cognito uno, cognoscitur et alterum. Cro. Jac. 539.—(Of things relating to each other, one being known, the other is also known.)

RELATOR, a rehearser, teller, or informer; also, a plaintiff to an information in Chancery, where the rights of the Crown are not immediately concerned, who is responsible for costs.

RELEASE [*relaxatio*], a gift, discharge, or renunciation of a right of action; also, an instrument whereby estates or other things are extinguished, transferred, abridged, or enlarged. *Com. Dig.*, tit. *Release*.

There are five species of release: 1st. By way of enlargement; as if he in remainder in fee release to the particular tenant in possession. 2ndly. By way of passing an estate; as where one coparcener or joint-tenant releases to the other. 3rdly. By way of passing a right; as when a disseisee releases to a disseisor. 4thly. By way of extinguishment: as if my tenant for life make a greater estate than he is warranted in granting, and I release to his grantee; or if the lord release to his tenant his seignorial rights. And, 5thly. By way of entry and feoffment; as when a disseisee releases to one of two disseisors. *Watk. Conv.* 317; 18 *Vin. Abr.* See **LEASE** and **RELEASE**.

RELEASEE, the person to whom a release is made.

RELEASER, the maker of a release.

RELEGATION, exile; judicial banishment.

Abjuration is foreswearing the realm for ever; relegation is banishment for a time only. *Co. Litt.* 133.

In Rome, relegation was a less severe punishment than deportation, in that the relegated person did not thereby lose the rights of a Roman citizen, nor those of his family, as the authority of a father over his children, &c. *Encyc. Lond.*

RELEVANT, applying to the matter in question; affording something to the purpose.

RELICT, a widow.

RELICTA VERIFICATIONE, where a judgment is confessed by *cognovit actionem* after

plea pleaded, and the plea is withdrawn, it is called a confession or *cognovit actionem relictâ verificatione*. *Chit. Arch. Prac.* 676.

RELIEF, legal remedy for wrongs, &c.; charitable assistance.

In the feudal law a payment made to the lord by the tenant coming into possession of an estate held under him. Abolished with other feudal grievances.

RELIGION, offences against, they are,

- (1) Apostacy.
- (2) Heresy.
- (3) Reviling the ordinances of the church.
- (4) Blasphemy.
- (5) Profane swearing.
- (6) Conjuratation or witchcraft.
- (7) Religious imposture.
- (8) Simony.
- (9) Profanation of the Lord's day.
- (10) Drunkenness.
- (11) Lewdness.

RELIGIOUS HOUSES, places set apart for pious uses, such as monasteries, churches, hospitals, and all other places where charity was extended to the relief of the poor and orphans, or for the use or exercise of religion.

RELIGIOUS IMPOSTORS, those who falsely pretend an extraordinary commission from heaven, or terrify and abuse the people with false denunciations of judgment; punishable with fine, imprisonment, and infamous corporal punishment. 4 *Step. Com.* 238.

RELIGIOUS MEN [*religiosi*], such as entered into some monastery or convent, there to live devoutly. They were held to be *civiliter mortui*.

RELINQUISHMENT, a forsaking, abandoning, or giving over.

RELIQUA, the remainder or debt which a person finds himself debtor in upon the balancing or liquidating an account. Hence *reliquary*, the debtor of a *reliqua*; as also a person who only pays peace-meal. *Encyc. Lond.*

RELIQUES, remains, such as the bones, &c., of saints, preserved with great veneration as sacred memorials of them; they are forbidden to be used or brought into England. 3 *Jac. I.*, c. 26.

RELOCUTION, a reletting or renewal of a lease; a *tacit relocation* is permitting a tenant to hold over without any new agreement.

Remoto impedimento emergit actio. 5 Co. 76.—(An impediment being removed, the action revives.)

REM, information in, when any goods are supposed to become the property of the Crown, and no one appears to claim them or to dispute its title, as anciently, in the case of treasure-trove, wrecks, waifs, and estrays seized by the Crown's officers. After such seizure an information was usually filed in the Exchequer, and thereupon a proclamation was made for the owner (if any) to come in and claim the effects, and at the same time there issued a commission of appraisement to value the goods, after the return of which, and a second proclamation had, if no

claimant appeared, the goods were supposed derelict, and condemned to the use of the Crown; and when in later times forfeitures of the goods themselves, as well as personal penalties on the parties, were inflicted by act of Parliament for transgressions against the laws of the customs and excise, the same process was adopted in order to secure such forfeited goods to the public use, though the offender had escaped. 4 *Step. Com.* 49.

REMAINDER [*remanentia*], an expectant estate, created by convention of parties, limited in lands, tenements, or rents, to be enjoyed by some third person or stranger after the expiration of another particular estate; it may be either for a certain term, or in fee-simple, or fee-tail. It is either vested or contingent. See **CONTINGENT REMAINDER**, **CROSS REMAINDERS**, and **VESTED REMAINDER**.

In the creation of remainders the following rules must be observed:

1st. There must be a present or particular estate created, which, if the remainder be a vested one, must be, at least, for years; or if the remainder be contingent must be an estate of freehold, as a freehold cannot commence *in futuro* by the common law, although it can under a conveyance to uses.

2ndly. The particular estate and the remainders must be created by the same deed.

3rdly. The remainder must vest in the grantee during the particular estate, or the very instant it determines.

4thly. If the remainder be contingent, it must be limited to some one that may, by common possibility, or *potentia propinqua*, be *in esse* at or before the determination of the particular estate. *Walk. Conv.* 172.

REMANET, postponing a trial. A new notice of trial is necessary when a cause has been made a *remanet* at the assises, but not if it be made a *remanet* from one sittings to another, or is put off by order of *Nisi Prius*.

Where the cause is made a *remanet*, the costs incurred in bringing up witnesses, &c., are allowed to the party ultimately prevailing.

REMEDIAL STATUTES, those which are made to supply such defects, and abridge such superfluities in the common law, as arise either from the general imperfection of all human laws, from change of time and circumstances, from the mistakes and unadvised determinations of unlearned judges, or from any other cause. And this being done either by enlarging the common law, where it was too narrow and circumscribed, or by restraining it where it was too lax and luxuriant, has occasioned a division of remedial acts of Parliament into enlarging and restraining statutes.

REMEDY, the legal means to recover a right; also, a certain allowance to the master of the Mint, for deviation from the standard weight and fineness of coins. *Encyc. Lond.*

REMEMBRANCERS, officers of the Exchequer, who remind the lord treasurer and the justices of that court of such things as are to be called on and dealt in for the benefit

of the Crown. 57 *Geo. III.*, c. 60; 3 & 4 *Wm. IV.*, c. 99. Also, officers of corporations, &c.

REMISSION, a pardon from the Crown, passed under the Great Seal.

Remissus imperanti melius paretur. 3 *Inst.* 233.—(A man commanding not too strictly, is better obeyed.)

REMITMENT, the act of remitting to custody.

REMITTER, where he who has the right of entry in lands, but is out of possession, obtains afterwards the possession of the lands by some subsequent, and, of course, defective title; in this case he is remitted or sent back, by operation of law, to his ancient and more certain title. The possession which he has gained by a bad title shall be *ipso facto* annexed to his own inherent good one; and his defeasable estate shall be utterly defeated and annulled by the instantaneous act of law, without his participation or consent. As if *A.* disseise *B.*, i. e., turn him out of possession, and afterwards demise the land to *B.* (without deed), for a term of years, by which *B.* enters, this entry is a remitter to *B.*, who is in of his former and surer estate. But if *A.* had demised to him for years by deed indented, or by matter of record, there *B.* would not have been remitted. For if a man, by deed indented, take a lease of his own lands, it shall bind him to the rents and costs, because a man never can be allowed to affirm that his own deed is ineffectual, since that is the greatest security on which men rely in all manner of contracting. The same law, if it had been by matter of record, for that is of its own nature uncontrollable evidence, which a man cannot be allowed to controvert. 3 *Step. Com.* 379.

REMITTITUR DAMNA, where a jury gives greater damages than a plaintiff has declared for, it may be rectified by entering a *remittitur* for the excess; or, if a plaintiff have signed judgment for the greater sum, the court will give him leave to amend it, by entering a *remittitur* for the excess, even in a subsequent term and after error brought. The damages are usually remitted in ejectment and replevin where judgment is signed by confession or default. *Chit. Arch. Prac.* 1085.

REMITTITUR OF RECORD, formerly when a writ of error, in the Exchequer Chamber, abated, or was discontinued, the transcript must have been remitted, and a *remittitur* entered, before a defendant could sue out execution; but now it is no longer necessary, for the record remains in the court below, and execution is, therefore, in all cases, now issued by and out of that court. *H. T.*, 4 *Wm. IV.*, r. 16.

RENANT or **RENIANT** [*negans*], denying.

RENCOUNTER, a sudden meeting; as opposed to a duel, which is deliberate.

RENDER, to yield, give again, or return.

Certain things lie in render, i. e., must be rendered or answered by the tenant as rents, heriots, and other services.

RENOVANT, renewing.

RENOUNCE, to give up a right.

RENT [*reditus*] a certain profit issuing yearly out of lands and tenements corporeal, and may be regarded as of a twofold nature:— first, as something issuing out of the land, as a compensation for the possession during the term; and, secondly, as an acknowledgment made by the tenant to the lord of his fealty or tenure. It must always be a profit, yet there is no occasion for it to be, as it usually is, a sum of money; for spurs, capons, horses, corn, and other matters, may be, and occasionally are, rendered by way of rent: it may also consist in services or manual operations, as to plough so many acres of ground, and the like; which services, in the eye of the law, are profits. The profit must be certain, or that which may be reduced to a certainty by either party; it must issue yearly, though it may be reserved every second, third, or fourth year; it must issue out of the thing granted, and not be part of the land or thing itself, which must be either lands or tenements corporeal.

There are several kinds of rents, viz.:—

1. *Rent-service*, so called because it has some corporeal service incident to it, as, at the least, fealty.

2. *Rent-charge*, where the owner of the rent has no future interest or reversion in the land.

3. *Fee-farm rent*, issuing out of an estate in fee, of at least one-fourth of the value of the lands, at the time of its reservation.

4. *Rent-seck*, a barren rent, which is in effect nothing more than a rent reserved by deed, but *without* any clause of distress.

5. *Rents of assize*, the certain established rents of the freeholders and ancient copyholders of a manor, and which cannot be departed from; those of the freeholders are frequently called

6. *Chief rents*, and both sorts are indifferently denominated

7. *Quit rents*, because thereby the tenant goes quit and free of all services.

8. *Rack rent*, a rent of the full value of the tenement, or near it.

9. *Fore-hand-rent*, otherwise called a fore-gift or income, but more commonly a fine; it is a premium given by the lessee at the time of taking his lease, and has been considered as an improved rent.

All kinds of rents are now recoverable by distress. 4 *Geo. II.*, c. 28, § 5.

Rent is not due till midnight of the day upon which it is reserved, although sunset is the time appointed by law to make a proper demand of it, to take advantage of a condition of re-entry or to tender, in order to save a forfeiture; but more properly speaking, the demand should be made before sunset, so as to allow sufficient light to count the money; and the person making the demand or tender must remain on the land till the sun has set. Where rent is reserved generally, and no mention is made, as is usual, of half-yearly or quarterly payments, nothing is due until the end of the year.

Rent is considered as of a higher nature than even a debt due on an instrument under seal, as between the parties themselves; but in the case of the death of the tenant, rent in arrear, whether it be by deed or parol, is held to be of equal degree with specialty debts; and therefore in the distribution of the deceased's estate, it is to be paid with debts of that degree. Receipts or discharges given for the payment of rent require to be stamped if the sum received amount to 5*l.* and upward.

RENTAL or **RENT-ROLL**, schedule or account of rent.

RENTAL-RIGHTS, a species of lease usually given at a low rent and for life. Such tenants were called *rentalers* or *kindly tenants*.

RENTAL'D TEIND BOLLS, when the tithes (*teiuds*) have been liquidated and settled for so many bolls of corn yearly, by rental, or an old use of payment. *Scotch Phrase*.

RENUNCIATION, the act of giving up a right.

REPARATIONE FACIENDA, an ancient writ, which lay in many cases of repairs. *F. N. B.* 127.

REPEAL, a revocation.

REPETUNDÆ or **PECUNIÆ REPETUNDÆ**, the term used to designate such sums of money as the *socii* of the Roman state, or individuals, claimed to recover from *Magistratus Judices*, or *Publici Curatores*, which they had improperly taken or received in the *provincia*, or in the *Urbs Roma*, either in the discharge of their *jurisdictio*, or in their capacity of *Judices*, or in respect of any other public function. Sometimes the word *repetundæ* was used to express the illegal act for which compensation was sought, as in the phrase, "*Repetundarum insimulari, daminari*;" and *pecuniæ* meant, not only money, but anything that had value. Originally inquiry was made into this offence, *extra ordinem ex senatus consulto*, as appears from the case of P. Furius Philus and M. Matienus, who were accused of this offence by the *Hispani*. *Smith's Dict. of Antiq.*

REPITITUM NAMIUM, a second or reciprocal distress, in lieu of the first, which was eligned.

REPLEADER, to plead again.

The motion for a replader is made, when, after issue joined and verdict thereon, the pleading is found (on examination) to have miscarried, and failed to effect its proper object, of raising an apt and material question between the parties. A replader may become necessary where the issue has been defectively joined.

Where a replader is applied for, on the ground of the immateriality of the issue, the cases establish the following distinction: if the materiality is occasioned by having taken a traverse on a pleading insufficient in point of law, and which it was therefore futile to bring into question in point of fact, and the case be such that the pleading so traversed might be made good by a different manner of pleading, the court will award a replader, or, in some instances, allow the party by

whom it was pleaded to amend. But if the pleading traversed discloses facts which shew that the case of the party is incurably bad, and could not be set right by any manner of allegation, the court will not allow a repleader, but where the party is plaintiff, will arrest the judgment; or, where defendant, award judgment *non obstante veredicto*. It is a clear rule, that the court will never grant a repleader, except where complete justice cannot otherwise be obtained; and it is never granted in favour of the person who made the first fault in the pleading.

On a judgment of repleader, neither party is entitled to costs. *Step. Plead.* 108.

REPLEGIARE, to redeem a thing detained or taken by another by giving sureties.

It is applied in the Scotch law to the power of reclaiming a criminal, and trying him under a different jurisdiction from that of the court before which he is accused.

REPLEGIARE DE AVERIIS, a writ brought by one whose cattle were distrained or put in pound, on any cause, by any person, on surety given to the sheriff to prosecute or answer an action. *F. N. B.* 68.

REPLEGIARI FACIAS, the original writ out of Chancery commencing an action of replevin; but it was superseded by the Statute of Marlbridge, 52 Hen. III., c. 21.

REPLETION, where the revenue of a benefice is sufficient to fill or occupy the whole right or title of the graduate who holds them. *Canon Law*. It has no place in England.

REPLEVIABLE or **REPLEVISABLE**, that may be taken back or replevied.

REPLEVIN, a personal action brought to recover possession of goods unlawfully taken, the validity of which taking it is the regular mode of contesting. It is a re-delivery of the pledge or thing taken in distress to the owner by the sheriff or his deputy, upon the owner giving security to try the right of the distress, and to restore it if the right be adjudged against him: after which the distrainer may keep it till tender made of sufficient amends, but must then re-deliver it to the owner. Although this action is usually confined to goods, &c., taken in distress, it may be brought for all goods and chattels unlawfully taken. It is the proper form of action to recover a specific chattel; for in trover damages only are recovered. When an act of Parliament orders a distress and sale of goods, it is in the nature of an execution, and this action does not lie, and a replevy of goods seized in order to condemnation it would be a contempt of the Court of Exchequer, for which an attachment would be instantly granted.

This action is of two sorts: 1, in the *detinet*; 2, in the *detinuit*. Where the party has had his goods re-delivered to him by the sheriff, the action is in the *detinuit*; "wherefore he detained the goods, &c.;" but where the sheriff has not made such replevin, but the distrainer still keeps possession, the action is in the *detinet*, "wherefore he detains the goods, &c." The action

in the *detinet* has long fallen into disuse, and is never brought unless the distrainer has eloiigned the goods, so that the sheriff cannot get at them to make replevin.

It is a general rule, that whoever brings replevin ought to have the property of the goods either general or special in him at the time of the taking, and it lies against him who takes the goods and also against him who commands the taking, or against both.

As to the proceedings in the inferior court. The Statute of Marlbridge, 53 Hen. III., c. 21, enacts (without suing out of Chancery an original writ), "that if the beasts of any man be taken and wrongfully withholden, the sheriff, after complaint made to him thereof, may deliver them without let or gainsaying of him that took the beasts, if they were taken without liberties: and if they were taken within liberties, and the bailiffs of the liberty will not deliver them, then the sheriff, for default of those bailiffs, shall cause them to be delivered."

The 11 Geo. II., c. 19, § 23, for the better securing the payment of rents, and preventing frauds by tenants, enacted, "that to prevent vexatious replevins of distresses taken for rent, all sheriffs and other officers having authority to grant replevins may and shall, in every replevin of a distress for rent, take in their own names, from the plaintiff and two responsible persons as sureties, a bond in double the value of the goods distrained (such value to be ascertained by the oath of one or more witness or witnesses not interested in the goods or distress, which oath the person giving such replevin is thereby authorized and required to administer), and conditioned for prosecuting the suit with effect and without delay, and for duly returning the goods and chattels distrained, in case a return shall be awarded before any deliverance be made of the distress." The sheriff is also ordered, at the request and cost of the avowant or person taking cognizance, to make an assignment to him of this bond, which enables him to sue upon it in his own name. When the distress is not for rent, the pledges taken by the sheriff are according to the Stat. West. 2, 13 Edw. I., st. 1, c. 2, and may be by bond, and that too of the plaintiff himself only; for the sheriff being answerable for the sufficiency of the pledges, may take the security as he please, since it is at his own peril. In such case, although the bond is not assignable at law, the party may apply to the sheriff for the bond, and sue upon it in his name.

If a tenant mean to replevy, he must within five days after notice of the distress, take with him two housekeepers, living in the city or county where the distress was made, and go to the office of the sheriff or his deputy and enter into the required bond; upon which the sheriff will direct a precept to one of his bailiffs, and the possession of the goods will be restored to the tenant, to abide the event of the suit in replevin.

Notice of the replevin should be given to the distrainer in order to maintain an action for selling the goods after a replevin has been granted. In all other cases of distress at common law, no time is limited for replevying, because the distrainer cannot sell the distress. To execute a replevin the sheriff may not only break open doors, but may call upon the *posse-comitatus* to help him. If the goods have been eloiigned, so that the sheriff cannot replevy them, then, upon plaint being levied in the county court, the sheriff may issue a precept in the nature of a *capias in withernam*, commanding his officer to take goods or cattle of the defendant to the value of those taken by him, and deliver them to the plaintiff.

Where the replevin is executed at the time the bailiff makes deliverance, he ought also to attach the defendant by his goods to make him appear at the next court day; for in this action the attachment is the first process, because the replevin complains of a tortious taking, which is in the nature of a trespass; a summons, however, is the more usual process in court.

After the goods have been replevied and delivered to the plaintiff, he must, according to the terms of the bond, levy his plaint at the next county court and prosecute his suit with effect and without delay. On the plaint being levied, the defendant is summoned, and if the cause be not removed, the action proceeds to issue and trial in the ordinary way in the inferior court. The plaint is usually levied by lodging it at the office of the under-sheriff.

But replevin suits are usually removed, and this may be done at any time before final judgment, by either of the parties, into the courts of Queen's Bench or Common Pleas, to be there determined, and that without any actual cause shown. When the replevin is commenced in the county court by plaint, the cause is removed by the writ of *recordari facias loquelam*, usually abbreviated, *re. fa. lo.* The writ of *pone* lies only where the suit is commenced by original, and is therefore gone into disuse. If the suit be commenced in other inferior courts not of record, including writs in ancient demesne, the suit is moved by writ of *accedas ad curiam*, which is a species of *recordari*. Where it is in inferior courts of record, it is moved by writ of *certiorari*. If the sheriff return to the *recordari*, *turdè*, the party shall have an *alias*, &c.

The writ should be returned and filed with one of the masters of the superior court, within two terms, at least, after the writ is returnable, otherwise the opposite party may obtain a certificate from one of the masters that no such writ and returns are filed, and the cursitor will thereupon issue a writ of *procedendo*, by which the cause may be removed to and proceeded in in the inferior court. Or if either party, having sued out a *re. fa. lo.*, neglect to file it, the other party, for the sake of expedition, may, without

waiting till the end of the second term, sue out another writ of the same nature and get it returned and filed for removing the proceedings into the court above.

The defendant enters his appearance with one of the masters, on or before the *quarto die post* of the return of the *recordari*, &c. If he do not appear, the plaintiff should serve him with a four-day rule to appear, and upon his non-appearance thereto sue out a *pone per vadios*; if no appearance be entered on or before the appearance day of the return, the sheriff returns *nihil* on the *pone* and a *distringas* is sued out, under which the sheriff levies 40s. After this, if no appearance be entered, sue out an *alias* and then a *pluries distringas*; or if the sheriff return *nulla bona*, a *testatum distringas* may be sued out into a different county. The issues are increased by motion to the court, both upon the *alias* and *pluries distringas*, upon the last of which they are increased to the amount of the debt and costs. If the defendant have not then appeared, a motion is made for a rule to show cause "why the issues returned upon the several writs of *distringas* should not be sold, and the monies arising from the sale thereof should not be forthwith brought into court; and why it should not be referred to one of the masters to tax the plaintiff his costs occasioned by his issuing out the said several writs; and why such costs, when taxed, should not be paid out of the monies so brought into court: and why the surplus of the said monies after payment of the said costs should not be retained in court until the purpose of the said writs be answered." If the rule be made absolute, the sheriff is served with a copy of it, and if he do not obey it, he is attached. This process is continued by *distringas ad infinitum*, applying from time to time to sell the issues for payment of the costs, until the defendant appear; but if *nulla bona* be returned to the *distringas*, a *capias* to outlawry may be had. If the plaint, however, have been removed by the defendant, or by *accedas ad curiam*, the *pone per vadios* is omitted.

After appearance, the plaintiff files or delivers his declaration, as in ordinary cases. The venue in this action is local and particular. The defendant may take a judgment of *non pros.*, as in ordinary actions; but the plaintiff is not thereby prevented from proceeding, for he may sue out a writ of second deliverance. The defendant may, after judgment of *non pros.*, proceed by writ of inquiry, in pursuance of 17 Car. II., c. 7, § 2, which renders a writ of second deliverance void, because the goods still remain with the plaintiff; or he may take an assignment of the replevin bond, and proceed against the plaintiff and his sureties.

The pleas in replevin have been divided into four sorts:—1st, pleas in abatement; 2d, the plea of *non cepit*; 3d, pleas in justification; and, 4th, avowries or cognizances.

As replevin by writ is obsolete, pleas in abatement do not occur in practice.

The plea of *non cepit* used to be termed the general issue in replevin; but although it was so called, it put in issue only the caption and detention, and not the property; for the only question for the jury to decide under this plea, is, whether the defendant took the goods or chattels, and not whose they are.

There are two kinds of pleas in justification—those which disaffirm property in the plaintiff, and those which affirm property in the plaintiff—which might occur in the case of a distress being made for personal services, on the tenant dying, the replevin being sued out by the executors.

As to avowries and cognizances for rent. In them is set forth, as in a declaration, the nature and merits of the defendant's case, to show that the distress taken by him was lawful, and to entitle him to a judgment *de retorno habendo*. The technical difference between an avowry and cognizance, is this: where the action is against the principal or landlord, he makes avowry, that is, he avows, taking the distress in his own right; where, on the other hand, it is against the bailiff or servant, he makes cognizance, that is, he acknowledges the taking in right of the principal or landlord; and where it is against both, the one avows and the other makes cognizance. Parceners must join in an avowry or cognizance for rent; for they make but one heir, and the rent is an entire inheritance. Joint tenants should likewise join. The defendant in replevin need not set forth his title by 11 Geo. II., c. 19, § 22. This statute does not extend to an avowry for a rent charge. The fact of being bailiff should be correctly stated, as it is traversable.

But avowries and cognizances *damage feasant*, are not within the 11 Geo II., c. 19, § 22, and, therefore, the title of the avowant must be traced down directly; and the defendant must show that the place where, &c., is his freehold, or the freehold of the person under whom he makes cognizance; and he must set forth the precise nature of his estate.

As regards the time for avowing or making cognizance, &c., the notice must be to avow, &c., within four days, if the venue be laid in London or Middlesex, and the defendant reside within twenty miles of London, or within eight days, if the venue be laid in any other county, or the defendant reside above twenty miles from London; and in default, &c., the plaintiff may sign judgment.

The plaintiff may plead in bar to an avowry or cognizance for rent, *non demisit, non tenuit*, nothing in arrear, for part of the rent and tender of the residue. That the avowant afterwards used or sold the cattle or goods distrained, may also be pleaded. Also, to an avowry for rent, a plea that before the defendant had any interest in the premises they were mortgaged in fee; that the mortgagor remained in possession, and demised to the defendant; that the defendant demised to the plaintiff; that afterwards the

mortgage money being still due, and the rent avowed for in arrear, the mortgagee gave notice to the plaintiff to pay the rent to him, and threatened, in case of non-payment, to put the law in force; wherefore, the plaintiff necessarily paid the rent to the mortgagee, is good, being a plea of payment. The statutes of set-off do not extend to replevin, therefore a set-off cannot be pleaded to an avowry for rent, neither can a mutual demand be given in evidence, where a defendant justifies under a distress; but the Statute of Limitations may be pleaded to some sorts of rents. 3 & 4 Wm. IV., c. 27, § 2. The plaintiff may plead in bar "tender of amends" to an avowry or cognizance *damage feasant*.

The pleadings in replevin subsequent to the plea in bar, vary with the particular circumstances of each individual case. They are, however, generally similar to those in other actions, except that they bear a name applicable to those of one stage later in the course of proceeding.

Demurrers to the declaration are not usual in practice, except where the place is omitted.

If the plaintiff plead to the avowry or cognizance, the issue may be made up in the ordinary way by either party; and after giving notice of trial, the plaintiff, or if he neglect to do so, the defendant, may make up the *nisi prius* record, enter the cause for trial, and proceed as in ordinary cases. And as both parties are considered plaintiffs, when the record is carried down to trial by the defendant (which is usually the case), it is not necessary to have the proviso in the jury process, as in cases of trial by proviso, although in practice it is inserted. As either party is at liberty to carry the cause down for trial, the defendant in replevin is not entitled to move for judgment as in case of a nonsuit, under 14 Geo. II., c. 17, § 1.

The defendant cannot have a rule to discontinue; for though he be an actor in the action, yet still it is the plaintiff's action.

The landlord's title, under which the tenant has gained possession of the premises, cannot be disputed, although the tenant is prepared with evidence to show that the premises have been fraudulently conveyed to the landlord, and that the actual title is vested in another person.

If a verdict be found for the plaintiff, the jury assess the damages, as in a verdict for plaintiff in trespass. If there be judgment for the plaintiff upon a *relicta verificatione, cognovit actionem, nil dicit, &c.*, or for want of a replication to his plea in bar to the avowry, or upon a demurrer, a writ of inquiry of damages shall be awarded, or, at the request of the plaintiff, by the defendant's assent, the court may assess the damages without such writ; but if there be judgment for the plaintiff, by default, after appearance, there shall be a special writ of inquiry for the value of the goods or cattle, and damages.

If the verdict be for the defendant, the jury find the issues specially for the defendant, and the judgment is, that he have a return of the goods irreplevisable. The defendant may obtain his judgment for a return of the goods by suing out a writ *de retorno habendo*. If to this the sheriff return that the goods were eloigned, upon the writ and return being filed, a *capias in withernam* is issued; and if the plaintiff have no goods or cattle, the sheriff returns *nihil*, and the defendant may thereupon sue out a *scire facias* against the pledges, or against the sheriff, either if the pledges be insufficient, or if no pledges were taken; but in such instance, an action on the case would lie against the sheriff. The plaintiff may have the usual writs of execution for his damages and costs.

Taking an assignment of the replevin bond, is not a waiver of remedy against the sheriff; for where the pledges is insufficient, the sheriff is still liable to an action.

The court will very seldom grant a new trial where the verdict is for the plaintiff.

As the sheriff's court is not one of record, no writ of error lies; but if the defendant complains that false judgment has been given against him in the court below, he must sue out of Chancery a writ of false judgment, which is directed to the sheriff, commanding him to remove the action into the court above. But when a replevin suit is brought in an inferior court of record, a writ of error lies to the superior court. *Woodf. Land. and Tenant*, tit. *Action of Replevin*; *Chit. Arch. Prac.*, tit. *Replevin*; *Gilbert's Replevin*; *Williamson's Replevin*.

By the County Courts Act, 9 & 10 Vict., c. 95, §§ 119—121, it is provided, that all actions of replevin in cases of distress for rent in arrear or damage *feasant* which shall be brought in the county court shall be brought without writ in a court held under this act. That in every such action of replevin the plaint shall be entered in the court holden under this act for the district wherein the distress was taken. That in case either party to any such action of replevin shall declare to the court in which such action shall be brought that the title to any corporeal or incorporeal hereditament, or to any toll, market, fair, or franchise is in question, or that the rent or damage in respect of which the distress shall have been taken is more than the sum of twenty pounds, and shall become bound, with two sufficient sureties, to be approved by the clerk of the court, in such sums as to the judge shall seem reasonable, regard being had to the nature of the claim, and the alleged value or amount of the property in dispute, or of the rent or damage, to prosecute the suit with effect and without delay, and to prove before the court by which such suit shall be tried that such title as aforesaid is in dispute between the parties, or that there was ground for believing that the said rent or damage was more than twenty pounds, then, and not otherwise, the action may be removed before any

court competent to try the same in such manner as hath been accustomed.

REPLEVISH, to let one to mainprise on surety.

REPLICATION, a plaintiff's answer to a defendant's plea, except in replevin, when it moves from the defendant, who, however, is a *quasi* plaintiff, in opposition to the plaintiff's plea in bar.

REPORT, a public relation or bringing again to memory of cases judicially adjudged in courts of justice, with the reasons as delivered by the Judges. *Co. Litt.* 293.

Also, the certificate from the masters of the courts, when the courts make a reference to them concerning accounts, &c.; or from committees of either House of Parliament.

The manner in which a Master in Chancery informs the court of the result of his enquiries as to the matters referred to him, is either by certificate or report. A certificate is a mere notification of a particular fact, as that a pleading is scandalous or impertinent, but a report is a statement of the Master's findings and opinions. It is either *general*, i. e., of all the matters referred, but no other, or *separate*, i. e., of some special matter, which it is material to have reported at once, without waiting for the general report. When a report has been settled, a warrant must be taken out and served, "to sign the Master's report." This warrant is made returnable in four days after service, exclusive of the day of service and inclusive of the last day, and also exclusive of Sunday. It is not an attendable warrant, the object of it being merely to give the other parties notice, in order that they may bring in their objections, if they have any, as after the return of the warrant they are precluded from doing so. The report must be filed before it can be acted upon by the court.

All certificates as well as all reports of mere calculation and matters of opinion not requiring any further order to give effect to them; need not be confirmed. But reports, whether made pursuant to a decree or order, involving a question of equity or fact upon which the court may have to decide, as well as the report allowing the highest bidder to be the purchaser, must be confirmed by the court by orders *nisi* and absolute. Reports as to the appointment of guardian and allowance of maintenance, and the general management of an infant's estate, as to granting leases and purchasing estates, and carrying contracts into effect, are usually confirmed by the petition praying further directions. If any party is dissatisfied with the Master's report, he must, before he can file exceptions thereto, submit the points to the Master's consideration, by leaving objections to the draft report. Exceptions may be taken immediately the Master's report has been filed, but not before. They must be taken before the order *nisi* to confirm the report has been made absolute.

REPOSITION OF THE FOREST, a reputting to; a re-afforesting, *Manw.* p. 1; also, re-

trocession, or the returning back of a right assigned from the assignee to the person granting the right. *Scotch Term.*

REPOSITORY, a storehouse or place wherein things are kept; a warehouse. *Cro. Car.* 555.

Repellitur à sacramento infamis. Co. Lit. 158.—(An infamous person is prevented from an oath.)

REPRESENTATION, the personating another, as heirs, executors, administrators; also, a collateral statement, in insurance, either by parol or in writing, of such facts or circumstances relating to the proposed adventure, and not inserted in the policy, as are necessary for the information of the insurer to enable him to form a just estimate of the risk. Such representations are often the principal inducement to the contract, and afford the best ground upon which the premium can be calculated. *Encyc. Lond.*

The written pleading presented to a lord ordinary of the Court of Session in Scotland when his judgment is brought under review.

REPRESENTATIVE, bearing the character or power of another. The heir at law or devisee is a real representative; an executor or administrator is a personal representative.

REPRIEVE [*reprendre*, Fr., to take back], the withdrawing of a criminal's sentence for an interval of time.

It may take place *ex mandato reginæ*, at the mere pleasure of the Crown.

Or, *ex arbitrio judicis*, either before or after judgment; as, where the Judge is not satisfied with the verdict, or the evidence is suspicious, or the indictment is insufficient, or if any favourable circumstances appear in the criminal's character, in order to give room to apply to the Crown for either an absolute or conditional pardon.

Or, *ex necessitate legis*; as, where a woman is capitally convicted, and pleads her pregnancy.

Or, if the criminal become *non compos*. 4 *Step. Com.* 459.

REPRISAL, the taking one thing in satisfaction for another: it is either *ordinary*, as arresting and taking the goods of merchant-strangers within the realm, or *extraordinary*, as satisfaction out of the realm, and is under the Great Seal. *Lex. Mercat.* 120. Also, recaption: which see. See **LETTERS OF REPRISAL**.

REPRISES, deductions and payments out of a manor or lands, as rent-charges, annuities, &c.

Reprobata pecunia liberat solventem. 9 Co. 79.—(Money refused, frees the debtor.)

REPROBATOR, *action of*, a proceeding intended to convict a witness of perjury in Scotland, to which action the witness must be made a party.

REPUBLICATION OF WILLS, a second publication, an avowed renewal. Publication of a will is now no longer necessary. 1 *Vict.*, c. 26.

Reputatio est vulgaris opinio ubi non est veritas.

Et vulgaris opinio est duplex, scil.—Opinio vulgaris orta inter graves et discretos humines, et quæ vultum veritatis habet; et opinio tantum orta inter leves et vulgares homines, absque specie veritatis. 4 Co. 107.

—(Reputation is vulgar opinion where there is not truth. And common opinion is of two kinds: to wit, common reputation arising among grave and sensible men, and which has the appearance of truth; and mere opinion arising among foolish and ignorant men, without any appearance of truth.)

REP-SILVER, money anciently paid by servile tenants to their lord to be quit of the duty of reaping his corn.

REPUBLIC, commonwealth, the state in which power is lodged in the people.

REPUGNANT, that which is contrary to what is stated before. A repugnant condition is void.

REPUTATION, credit, honor.

Injuries to ones reputation are defamatory and malicious words, libels, malicious indictments, or prosecutions.

REPUTED OWNER, one who has to all appearances the right and actual possession of property.

REQUEST, a demand or requirement.

REQUESTS, *courts of*, tribunals of a special jurisdiction for the recovery of small demands, as the court in the city of London, established by act of Parliament, which is preserved by the Small Debts' Act, 9 & 10 *Vict.*, c. 95.

REQUISITION, a notarial demand of a debt made by a creditor, in consequence of a clause in the securities for debt previous to the Reformation, when a personal obligation was deemed illegal. *Scotch Term.*

REERE-FIEFS, inferior feuldatories in Scotland. *Rerum ordo confunditur, si unicuique jurisdictio non servetur.* 4 *Inst. Proem.*—(The order of things is confounded if every one preserves not his jurisdiction.)

Rerum progressus ostendunt multa, quæ in initio præcaveri seu prævideri non possunt. 6 Co. 40.—(The progresses of time show many things which, at the beginning, could not be guarded against or foreseen.)

Rerum suarum quilibet est moderator et arbiter. Co. Lit. 223.—(Every one is the moderator and arbiter of his own affairs.)

RES GESTÆ, all the surrounding facts of a transaction.

RES INTEGRA, an entire thing or agreement.

RESCUIT or **RECEIT** [*receptio*], an admission or receiving of a third person to plead his right in a cause formerly commenced between two other persons.

RESCUIT OF HOMAGE, the lord's receiving homage of his tenant at his admission to the land. *Kitch.* 148.

RESCISSORY ACTION, one to rescind a contract. *Scotch proceeding.*

RESCOUS, *writ of*. If a man send his servant to distrain, and rescous be made, the master may have this writ, and he may join an assault and battery of the servant in the writ, for

both are torts; and wherever the same plea may be pleaded and the same judgment given on two counts, they may be joined in the same declaration. This proceeding is very rarely adopted, as a special action on the case is a better remedy. *Woodf. Land. and Tent.* 869.

RESCRIPT, the answer of an emperor when consulted by particular persons on some difficult question; it is equivalent to an edict or decree.

Rescriptum principis contra jus non valet. Reg. Civ. Jur.—(The prince's rescript avails not against right.)

RESCUE OF DISTRESS, when a distress is taken without cause, or contrary to law, the tenant may lawfully make rescue before it is impounded, for then it is deemed to be in the custody of the law.

RESCUE OF A PRISONER, the forcibly and knowingly freeing another from an arrest or imprisonment, and it is generally the same offence in the stranger so rescuing as it would have been in a gaoler to have voluntarily permitted an escape. A rescue therefore of one apprehended for felony, is felony; for treason, treason; and for a misdemeanor, a misdemeanor; and it is also a misdemeanor if the person rescued be confined not on any criminal charge. It is punishable by fine or imprisonment.

RESCUSSOR, the party making a rescue.

Res denominatur à principuli parte. 9 Co. 47.—(The thing is named from its principal part.)

Res est misera ubi jus est vagum et incertum. 2 Salk. 512.—(The thing is miserable where the law is vague and uncertain.)

Reservatio non debet esse de proficuis ipsis quia conceduntur, sed de redditu novo extra proficua. Co. Lit. 142.—(A reservation ought not to be of the profits themselves, because they are granted, but from the new rent out of the profits.)

Res generalem habet significationem, quia tam corporea quam incorporea, cujuscunque sunt generis, naturæ sive speciei, comprehendit. 3 Inst. 182.—(A thing has a general signification, which comprehends corporeal and incorporeal objects, of whatever nature, sort, or species.)

RESSEISER, the taking lands into the hands of the Crown, where a general livery or *ouster la main* was formerly misused. *Staundf. Prærog.*

RESERVATION, a keeping aside or providing.

RESET, the receiving or harbouring an outlawed person.

RESIANCE, residence, abode, or continuance.

RESIANT ROLLS, those containing the resiants in a tithing, &c., which are to be called over by the steward on holding courts leet.

RESIDENCE, abode; also, the continuance of a parson or vicar on his benefice. It is upon the supposition of residence that the law styles every parochial minister an incumbent.

By 1 and 2 Vict., c. 106, repealing the former acts on the subject, every spiritual

person holding a benefice (a term which, as used in this act, comprises all parochial churches, perpetual curacies, chapels, and church or chapel districts whatever, if with cure of souls) shall keep residence on his benefice, and in the house of residence belonging thereto; and if he absent himself therefrom for a period exceeding three months, either accounted together or several times, in any one year; he shall forfeit, unless resident at some other of his benefices, a certain portion (increasing with the length of absence) of the annual value of his benefice. The exceptions and modifications to which are,

1st, No heads of houses in the University of Cambridge or Oxford, or warden of the University of Durham, or head master of Eton, Winchester, or Westminster School, who shall have respectively not more than one benefice, shall be liable to the penalties of non-residence.

2ndly, Deans and archdeacons, and various public professors, readers, preachers, and chaplains, the provost of Eton, the warden of Winchester, the master of the Charterhouse, the principal of St. David's and of King's College, London; and also (provided they are not absent from their benefices more than five months in the year) the fellows of Eton and Winchester, and all canons, minor canons, priests, vicars, and vicars coral, are entitled to count the time of their official residences or duties as if it had been passed upon their benefices.

3rdly, If there be no house or no fit house of residence, the bishop may license the holder of the benefice from time to time to reside in some fit house elsewhere, provided it be within a certain specified distance from his church or chapel, and the same shall thereupon become a legal house of residence for all purposes.

4thly, If there be no house, or no fit house of residence, and such certificate be also produced as by the act provided, that no house convenient for the residence of the holder of the benefice can be obtained within the parish, or within the specified distance from the church or chapel, or if the residence of the holder of any benefice within those limits is prevented by any incapacity of mind or body, or by the dangerous illness of his wife or child (but subject in the latter case to certain restrictions as to time and otherwise), the bishop may grant a license of non-residence, or in case of his refusal, there may be an appeal to the archbishop of the province.

5thly, If the holder of any benefice happen to occupy in the same parish any mansion or messuage whereof he is the owner, the bishop may grant him a license to reside therein, and if he refuse, remedy may be had by the same course of appeal.

6thly, The bishop is empowered, in any other case besides those enumerated, to grant, if he shall think it expedient, a license to reside out of the limits of the

benefice; but in a case of this description the special circumstances and reasons must be transmitted to the archbishop of the province, without whose allowance the license will be ineffectual.

It is further provided by this act, that annual returns of residents and non-residents shall be made to her Majesty in council; and that in case of non-residence, the bishop, instead of proceeding to enforce the penalties, may issue a monition against the offender, to be followed up, where requisite, by an order to reside; and in case of non-compliance with such order, may sequester the profits of the benefice, and apply them to the purposes in the act specified. In case also of long continued or repeated sequestration, the benefice is to become void, and a new presentation may be made, as if the former holder were dead.

For the more effectual promotion of this important duty of residence among the parochial clergy, there are also contained in this act (as in several others) a variety of provisions for repairing the houses in which they are to reside, and for building and purchasing new ones, and for raising money for these purposes by mortgage of the benefices. 3 *Step. Com.* 83.

RESIDENT, an agent, minister, or officer residing in any distant place with the dignity of an ambassador. Residents are a class of public ministers inferior to ambassadors and envoys; but, like them, they are under the protection of the law of nations. *Encyc. Lond.*

Also, a tenant who was obliged to reside on his lord's land, and not to depart from the same; called also, *homme levant et couchant*, and in Normandy, *resseunt du fief*. *Leg. H. I.*

RESIDUAL or **RESIDUARY**, relating to the residue; relating to the part remaining.

RESIDUARY DEVISEE, the person named in a will who is to take all the real property remaining over and above the other devisees.

It is provided by 1 Vict., c. 26, § 25, "that unless a contrary intention shall appear by the will, such real estate or interest therein as shall be comprised or intended to be comprised in any devise in such will contained, which shall fail or be void by reason of the death of the devisee in the lifetime of the testator, or by reason of such devise being contrary to law or otherwise incapable of taking effect, shall be included in the residuary devise (if any) contained in such will."

RESIDUARY LEGATEE, the person to whom the surplus of the personal estate, after the discharge of all debts and particular legacies, is left by the testator's will.

RESIDUUM, the surplus of a testator's or intestate's estate after discharging all his liabilities. Unless it appear in the will that the executor was intended to have the residue, he will be deemed by a Court of Equity as trustee for the next of kin. 11 Geo. IV. and 1 Wm. IV., c. 40. The distribution of the

surplusage of intestate's estate, is provided for by 22 & 23 Car. II., c. 10, explained by 29 Car. II., c. 3.

Resignatio est juris proprii spontanea refutatio, Godb. 284.—(Resignation is a spontaneous relinquishment of one's own right.)

RESIGNATION, the giving up a claim, office, or possession; also, the yielding up a benefice into the hands of the ordinary, called by the canonists, renunciation; and though it is synonymous to surrender, yet it is by use, restrained to yielding up a spiritual living to the bishop, as surrender is the giving up of temporal land into the hands of the lord.

A bond may be taken to secure the resignation of a living, in favour of any one person whomsoever, and in favour of any two persons, if they are the near relations of the patron. 9 Geo. IV., c. 94.

Res inter alios acta alteri nocere non debet. Co. Lit. 132.—(Things done between strangers ought not to injure one not a party.)

Res judicata pro veritate accipitur. Co. Lit. 103.—(A thing adjudicated is received as true.)

RESORT, the authority or jurisdiction of a court. The House of Lords is the *dernier resort* in cases of appeal.

RESPECTIVELY, particularly; as each belongs to each.

RESPECTU COMPUTI VICECOMITIS HABENDO, a writ for respiting a sheriff's account, addressed to the treasurer and baron of the Exchequer. *Reg. Orig.* 139.

Res per pecuniam æstimatur et non pecunia per res. 9 Co. 76.—(The value of a thing is estimated according to its worth in money; but the value of money is not estimated by reference to the thing.)

RESPITE, pause, reprieve; suspension of a capital sentence; a delay, forbearance, or continuation of time.

There are respites of execution, of debt, of homage, and of a jury.

Respiciendum est judicanti, ne quid aut durius aut remissius constituitur quam causa deposcit; nec enim aut severitatis aut clementiæ gloria affectanda est. 3 Inst. 220.—(It is a matter of import to one adjudicating that nothing either more lenient or more severe should be done than the cause itself warrants, and that the glory neither of severity nor clemency should be affected.)

RESPONDEAT OUSTER (let him answer over). If a demurrer is joined in a plea to the jurisdiction, person, or writ, &c., and it be judged that the defendant put in a more substantial plea, interlocutory judgment is given that he shall answer.

Respondeat raptor qui ignorare non potuit quod pupillum alienum abduxit. Hob. 99.—(Let the ravisher himself answer, for he cannot be ignorant that he has taken away another's pupil.)

RESPONDEAT SUPERIOR (let the superior answer). If a coroner of a county is insufficient, the county, as his superior, shall answer for him. *Wood's Inst.* 83.

RESPONDE-BOOK, in Exchequer. A book

kept by the directors of Chancery, in Scotland, in which are entered the accounts of all non-entry and relief duties, payable by heirs, who take precepts from Chancery.

RESPONDENT, an answerer in a suit, whether for himself or another.

RESPONDENTIA, money which is borrowed not upon the vessel, as in bottomry, but upon the goods and merchandize contained in it, which must necessarily be sold or exchanged in the course of the voyage; in which case the borrower, personally, is bound to answer the contract. 19 Geo. II., c. 37.

RESPONSA PRUDENTUM, the opinions of learned lawyers, forming part of the Roman laws.

RESPONSALIS, he who appears and answers for another in court at a day assigned; a proctor.

Res profecto stulta est nequitiae modus. 11 Co. 8 b.—(The measure of wickedness is a thing truly foolish.

RESTAUR or **RESTOR**, the remedy or recourse which assurers have against each other, according to the date of their assurances; or against the masters, if the loss arise through their default, as through ill-loading, want of caulking, or want of having the vessel tight; also, the remedy or recourse a person has against his guarantee or other person, who is to indemnify him from any damage sustained. *Encyc. Lond.*

RESTITUTIO IN INTEGRUM, the rescinding of a contract or transaction, so as to place the parties to it in the same position, with respect to one another, which they occupied before the contract was made, or the transaction took place. The *restitutio* here spoken of is founded on the edict. If the contract or transaction is such as not to be valid, according to the *jus civile*, this *restitutio* is not needed, and it only applies to cases of contracts and transactions, which are not in their nature or form invalid. In order to entitle a person to the *restitutio*, he must have sustained some injury capable of being estimated, in consequence of the contract or transaction, and not through any fault of his own, except in the case of one who is *minor xxv. annorum*, who was protected by the *restitutio* against the consequences of his own carelessness.

The following are the chief cases in which a *restitutio* might be decreed:—

The case of *vis et metus*. When a man had acted under the influence of force or reasonable fear, caused by the acts of the other party, he had an *actio quod metus causa*, for restitution, against the party who was the wrong doer; and also against an innocent person, who was in possession of that which had thus illegally been got from him; and also against the *heredes* of the wrong doer, if they were enriched by being his *heredes*. If he were sued in respect of the transaction, he could defend himself by an *exceptio quod metus causa*. The *actio quod metus* was given by the *prætor*, L. Octavius, a contemporary of Cicero.

The case of *dolus*. When a man was fraudulently induced to become a party to a transaction, which was legal in all respects saving the fraud, he had his *actio de dolo malo* against the guilty person and his *heredes*, so far as they were made richer by the fraud, for the restoration of the thing of which he had been defrauded; and if that was not possible, for compensation. Against a third party, who was in *bona fide* possession of the thing, he had no action. If he were sued in respect of the transaction, he could defend himself by the *exceptio doli mali*.

The case of *minores xxv. annorum*. A minor could by himself do no legal act, for which the assent of a *tutor* or *curator* was required; and, therefore, if he did such act by himself, no *restitutio* was necessary. If the *tutor* had given his *auctoritas*, or the *curator* his assent, the transaction was legally binding; but yet the minor could claim *restitutio* if he had sustained injury by the transaction.

There were, however, cases in which *minores* could obtain no *restitutio*; for instance, when a minor with a fraudulent design gave himself out to be major; when he confirmed the transaction after coming of age, and in other cases.

The case of *absentia*, which comprehends not merely absence in the ordinary sense of the word, but absence owing to madness or imprisonment, and the like causes.

The case of error. Mistake comprehends such error as cannot be imputed to blame: and in such case a man could always have *restitutio* when another was enriched by his loss.

The case of *alienatio in fraudem creditorum facta*. (*Dig. xlii., tit. 8.*) When a man was insolvent (*non solvendo*) and alienated his property for the purpose of injuring his creditors, the *Prætor's* edict gave the creditors a remedy.

In the imperial times *restitutio* was also applied to the remission of a punishment (*Inc. Ann. xiv. 12; Plin. Ep. x. 64, 65; Dig. xlviii., tit. 19, § 27*), which could only be done by the imperial grace. *Smith's Dict. of Antiq.*

RESTITUTION, the restoring anything unjustly taken from another; also, putting him in possession of lands or tenements who had been unlawfully disseised of them; a person being attainted of treason, &c., he or his heirs may be restored to his lands, &c., by royal charter of pardon.

RESTITUTION OF CONJUGAL RIGHTS, a species of matrimonial cause, which is brought whenever the husband or wife is guilty of the injury of subtraction, or lives separate from the other without any sufficient reason, in which case the ecclesiastical jurisdiction will compel them to come together again, if either party be weak enough to desire it, contrary to the inclination of the other. 3 *Step. Com.* 713.

RESTITUTION OF MINORS, a restoring them to rights lost by deeds executed during their minority.

RESTITUTION OF STOLEN GOODS. By the common law there was no restitution of goods upon an indictment, because it is at the suit of the Crown only, therefore the party was enforced to bring an appeal of robbery in order to have his goods again; but latterly it has been the practice of the court, upon the conviction of a felon, to order immediate restitution of such goods as are brought into court to be made to the several prosecutors. A writ or order of restitution may be issued by virtue of the Larceny Act, 7 & 8 Geo. IV., c. 29, § 57, which enacts, that if any person guilty of any felony or misdemeanour under that act, in stealing, taking, obtaining, or converting, or in knowingly receiving any chattel, money, valuable security, or other property, shall be indicted for the same, by or on behalf of the owner, his executor or administrator, and be convicted thereof, the property shall in such case be restored to the owner or his representatives, and the court shall have power to award from time to time writs of execution for such property, or to order the restitution thereof in a summary manner. This, however, is subject to a proviso as to valuable securities, that if before the award of restitution, it shall appear that they have been *bond fide* paid or discharged by some person liable to the payment thereof, or, being negotiable instruments, shall have been *bond fide* taken by transfer or delivery, by some person for a just and valuable consideration, without any notice or reasonable cause to suspect that they had been taken or converted by any felony or misdemeanour, in such case no restitution shall be awarded,

RESTITUTION, writ of. If the judgment below be reversed in a court of error, the plaintiff in error may have a writ of restitution in order that he may be restored to all he has lost by the judgment. If execution on the former judgment have been actually executed, and the money paid over, the writ of restitution may issue without any previous *scire facias*, but if the money have not been paid over, a *scire facias quare restitutionem non*, suggesting the matter of fact, viz., the sum levied, &c., must previously issue.

And, generally, if money, &c., be levied under a writ of execution, and the judgment be afterwards reversed or set aside, the party against whom the execution was sued out may have this writ of restitution; but where the judgment is set aside for irregularity, &c., restitution (when necessary) forms part of the rule; and if the goods or money be not restored, the court will grant an attachment.

A writ of restitution may also be awarded when a judgment in ejectment is upset.

Re-restitution takes place when there has been a writ of restitution before granted; and restitution is generally matter of duty, but re-restitution is matter of grace. *Raym.* 35.

RESTITUTIONE EXTRACTI AB ECCLESIA, a writ to restore a man to the church,

which he had recovered for his sanctuary, being suspected of felony. *Reg. Orig.* 69.

RESTITUTIONE TEMPORALIUM, a writ addressed to the sheriff, to restore the temporalities of a bishopric to the bishop elected and confirmed. *F. N. B.* 169.

RESULTING TRUST, one that arises from the operation or construction of equity, and in pursuance of the rule that trusts result to the party from whom the consideration moves, of which the following are instances:

1. Where an estate is subject to a trust or equitable interest, and a person purchases it for a valuable consideration, with notice of the trust or equitable interest, the estate will be subject to it in the hands of the purchaser; and a person acquiring an estate as a mere voluntary grantee, even without notice, or as a devisee, will take it subject to every beneficial or equitable lien. The principle has been extended to that equitable lien which a vendor has for any part of his purchase money remaining unpaid.

2. If an estate be purchased in the name of one person, and the consideration money belong to, or be paid by, another, the estate so purchased will be subject to a trust in favour of the person claiming or paying the money, although there be no express declaration for that purpose.

In order to raise a trust of this kind, the fact of the ownership of the money should appear upon the face of the deed, either by a recital or by expressions which amount to a necessary implication or presumptive proof of it. But if the nominal purchaser shall in any way disclose the real circumstances of the case, the court will raise the trust even against the express declaration of the purchase deed.

The exception to this rule is a purchase made by a father in the name of an unprovided son, for this is considered an advancement of the son, and not a trust for the father.

3. When a voluntary conveyance is made with a declaration of trust as to a part only of the land, or of the estate and interest in it, there is a resulting trust in that case, for the grantor or his representatives, as to the part or interest of which there is no declaration. This rule is applicable to devises. Also, within this rule may be included that class of cases where a trust is created by deed or will for a particular purpose, and there is no further declaration of the trust; as where lands are devised to executors for payment of debts and legacies, and no further trust is declared, the executors, after the payment of debts and legacies, will be trustees as to the surplus for the heir at law.

4. When a trustee or guardian renews a lease, the new lease shall be subject to the trust affecting the old lease. *1 Sand. Uses,* 348.

RESULTING USE, an implied use.

It is a general rule that if a feoffment be made without consideration and declaration of the use, the use will result to the feoffor, and be executed in him by the Statute of

Uses. The law equally favours a resulting use upon a conveyance, where only part of it is limited, and the remainder left undisposed of; it being a rule that so much of the use as a grantor does not dispose of remains in him. A resulting use may, however, be rebutted by parol evidence: but neither a grantor nor grantee can aver a use to a third person since the statute. 1 *Sand. Uses*, 96.

RE-SUMMONS, a second summons, or calling a person to answer an action where the first summons is defeated by any occasion.

RESUMPTION, the taking again by the Crown such lands or tenements, &c., as on false suggestion had been granted by letters patent. *Broke*, 298.

RETAINER, a servant who does not continually dwell in his master's abode, but only wears his livery, and attends sometimes upon special occasions; also, a special authority given by a client to his attorney or solicitor to institute a suit or conduct a defence for him.

RETAINER OF DEBTS. Among debts of equal degree an executor or administrator is allowed to pay himself first, by retaining in his hands so much as his debt amounts to. 3 *Step. Com.* 378.

RETAINING FEE [*merces retinens*], a preliminary fee given to a counsel in order to ensure his advocacy.

RETALIATION, the *lex talionis*: which see.

RETENEMENTUM, detaining, withholding, or keeping back.

RETENTION, the right of withholding a debt or retaining property until a debt due to the person claiming the right of retention shall be paid.

RETINENTIA, a retinue or person retained by a prince or nobleman.

RETIRING A BILL, taking up and paying a bill of exchange when due.

RETORNA BREVIUM, the return of writs.

RETORNO HABENDO, when the defendant has judgment in replevin for the return of the goods, there issues in his favour a writ *de retorno habendo*, whereby the goods are returned again into his custody, to be sold or otherwise disposed of, as if no replevin had been made. See **REPLEVIN**.

RETOUR, an extract from the Chancery of the service of an heir to his ancestor. *Scotch Term*.

RETOURED DUTY, the valuation, both new and old, of lands expressed in the retour to the Chancery, when any is returned or served their. *Scotch Phrase*.

RETRACTUS AQUÆ, the ebb or return of a tide.

RETRACTUS FEUDALIS, a power anciently claimed by the superior of an estate to pay off a debt adjudged, and to take a conveyance of the estate. *Scotch Phrase*.

RETRAXIT (he has withdrawn), a proceeding somewhat similar to a *nolle prosequi*, except that a *retraxit* is a bar to any future action for the same cause, but the *nolle prosequi* is not, unless made after judgment; the former

is also made in person, in open court, when the trial is called on; the latter is made by a mere entry on the roll out of court.

This proceeding is very unusual in practice. *Chit. Arch. Prac.* 1084.

RETTE, a charge or accusation.

RETURN-DAYS, certain days in term for the return of writs.

RETURNING FROM TRANSPORTATION, coming back to this country before the term of punishment is determined. It is an offence against public justice, and punishable by transportation for life or imprisonment. 4 & 5 *Wm. IV.*, c. 67.

RETURNO HABENDO. See **RETORNO HABENDO**.

RETURNUM AVERIORUM, a judicial writ, similar to the *retorno habendo*.

RETURNUM IRREPUGNABILE, a judicial writ addressed to the sheriff for the final restitution or return of cattle to the owner when unjustly taken or distrained, and so found by verdict; it is granted after a nonsuit in a second deliverance. *Reg. Judic.* 27.

REUS, a defendant.

Reus læsæ majestatis punitur, ut pereat unus ne pereant omnes. 4 *Co.* 124.—(A traitor is punished that one may perish, and not all perish.)

REVE or **GREEVE**, the bailiff of a franchise or manor, and officer in parishes within forests, who marks the commonable cattle.

REVELACH, rebellion.

REVELAND. The land which in Domesday is said to have been thane-land, and afterwards converted into reve-land, seems to be such land as being reverted to the king after the death of the thane, who had it for life, was not since granted out to any by the king, but rested in charge upon the account of the reve or bailiff of the manor. *Spelm. Feud.*, c. 24.

REVELS, sports of dancing, masking, &c., formerly used in princes' courts, the inns of court, and noblemen's houses, commonly performed by night; there was an officer to order and supervise them, who was entitled the Master of the Revels. *Cowell*.

REVENDEICATION. Upon the sale of goods on credit, by the law of some commercial countries, a right is reserved to the vendor to retake them, or he has a lien upon them for the price, if unpaid, and in other countries he possesses a right of stoppage *in transitu*, only in cases of insolvency of the vendee. The Roman law did not generally consider the transfer of property to be complete by sale and delivery alone without payment or security given for the price, unless the vendor agreed to give a general credit to the purchaser; but it allowed the vendor to reclaim the goods out of the possession of the purchaser, as being still his own property *Quod vendidi* (say the Pandects), *non aliter fit accipiendis, quam si aut pretium nobis solutum sit, aut satis eo nomine datum vel etiam fidem habuerimus emptori sine ulla satisfactione.* The present code of France gives a privilege or right of revendication

against the purchaser for the price of goods sold, so long as they remain in the possession of the debtor. In respect to ships, a privilege is given by the same code to certain classes of creditors, such as vendors, builders, repairers, mariners, &c., upon the ship, which takes effect even against subsequent purchasers, until the ship has made a voyage after the purchase; and, by the general maritime law, acknowledged in most, if not in all, commercial countries, hypothecations and liens are recognized to exist for seamen's wages and for repairs of foreign ships, and for salvage. *Story's Const. Laws*, 577.

REVENUE, income, annual profit received from land or other funds; also, the profits of the Crown. *2 Step. Com.* 544.

Revenue causes are peculiarly within the province of the Court of Exchequer.

REVERSE, to undo, repeal, or make void.

REVERSER, a reversioner.

REVERSION [*revertor*, Lat.], an expectant estate arising by operation of law; thus when a person has an interest in lands, and grants a portion of that interest, or in other words, a less estate than he has in himself, the possession of those lands shall, on the determination of the granted interest or estate, return or revert to the grantor. This right of reverter can only arise by the act of law, it cannot be created by the act of the party, though it is a consequence of his previous act. A reversion is something more than a bare right, it is an actual estate in the land, bearing the fruits of seignory. It being an immediate interest, may be conveyed to another person, though to an utter stranger. It is usual to pass the reversion by lease and release, as it saves the expense, in future investigations of the title, of proving the existence of a particular estate, at the time the reversion was conveyed as such. A reversion may be charged by the person entitled to it.

As the creation of a particular estate is of absolute necessity to give existence to a reversion, so the continuance of the reversion depends upon the subsistence of the particular estate; for if by any means, as by forfeiture, surrender, or expiration, such particular estate determine, the interest of the grantor must cease of necessity to be an estate in reversion, and will become an estate in possession, into which he may immediately enter. *Watk. Conv.* 208.

REVERSIONARY, to be enjoyed in succession.

REVERSIONER, one who has a reversion.

Reversio terræ est tanquam terra revertens in possessione donatori, sive hæredibus suis post donum finitum. Co. Lit. 142.—(A reversion of land is as it were the return of the land to the possession of the donor or his heirs after the termination of the estate granted.)

Re, verbis, scripto, consensu, traditione, junctura vestes sumere pacta solent. Plow. Com. 161 b.—(Compacts are accustomed to be clothed by the thing itself, by words, by writing, by consent, by delivery.)

REVIEW, *bill of*. It is in the nature of a writ of error, and its object is to procure an examination and alteration or reversal of a decree made upon a former bill, which decree has been signed and enrolled.

There are but two cases in which a bill of review is permitted to be brought, and these two cases are settled and declared by the first of the ordinances in Chancery of Lord Chancellor Bacon respecting these bills, which ordinances have never since been departed from. It is as follows: "No decree shall be reversed, altered, or explained, being once under the Great Seal, but upon bill of review. And no bill of review shall be admitted, except it contain either error in law, appearing in the body of the decree, without further examination of matters in fact or some new matter which hath arisen in time after the decree, and not any new proof which might have been used when the decree was made. Nevertheless, upon new proof that is come to light after the decree was made, which could not possibly have been used at the time when the decree passed, a bill of review may be grounded by the special license of the court, and not otherwise."

The decree must be first obeyed and performed before this bill can be filed; as if it be for land, the possession must be given up; if it be for money, the money must be paid; if for evidences, the evidences must be brought in; and so in other cases, unless the act to be done would extinguish the parties' right at the common law, as cancelling a bond, &c. No persons, except the parties and their privies, such as heirs, executors, and administrators, can have a bill of review, properly so called. It must be brought within twenty years from the date of the decree, except when the parties labour under disabilities, and fifty pounds to answer costs must be deposited with the registrar.

The defence is either by plea or demurrer, and if overruled, the defendant must answer. *Story's Eq. Plead.* 320.

REVIEW, *bill in the nature of bill of*, this is filed where the decree has not been enrolled; as, however, a decree not signed and enrolled may be altered or reversed upon a rehearing, without the assistance of such bill, if there is sufficient matter to alter or reverse it appearing upon the former proceedings, the new investigation of the decree must be, or at least usually is, brought on by a petition for a rehearing, when there is no defect to be supplied.

REVIEW, *supplemental bill in the nature of a bill of*. It nearly resembles, in its frame, a bill of review, except that, instead of praying that the former decree may be reviewed or reversed, it prays that the cause may be heard with respect to the new matter made the subject of the supplemental bill, at the same time that it is re-heard upon the original bill, and that the plaintiff may have such relief as the nature of the case made by the

supplemental bill requires. *Story's Eq. Plead.* 318.

REVIEW, *commission of*, a commission which was sometimes granted in extraordinary cases, to revise the sentence of the court of delegates, when it is apprehended they had been led into a material error. The court of delegates is abolished.

REVIEW, *court of*, the appeal court from the Commissioners in Bankruptcy, established by 1 & 2 Wm. IV., c. 56. It adjudicates upon such matters in bankruptcy as before were within the jurisdiction of the Lord Chancellor. An appeal lies to the Lord Chancellor on matters of law and equity, or on the refusal or admission of evidence. This court is abolished by 10 & 11 Vict., c. 102, and its jurisdiction transferred to one of the Vice Chancellors.

REVILING CHURCH ORDINANCES, a positive offence against religion, punishable by fine and imprisonment. 4 *Step. Com.* 234.

REVISING BARRISTERS' COURTS, courts held in the autumn throughout the country, to revise the list of voters for county and borough members of Parliament. An appeal lies to the Court of Common Pleas, under 6 & 7 Vict., c. 18.

REVIVOR, *bill of*, a bill filed to revive and continue the proceedings, whenever there is an abatement of the suit before its final consummation, either by death or marriage.

By the 49th Order, 26th August, 1841, it is directed, that it shall not be necessary, in any bill of revivor, to set forth any of the statements in the pleadings in the original suit, unless the special circumstances of the case may require it. If the defendant do not, within eight days after appearance to this bill, show cause by plea, answer, or demurrer filed, the plaintiff is entitled, as of course, either upon motion or petition, to an order to revive. 10th *Ord.*, 21st *Dec.* 1833.

REVIVOR, *bill in the nature of a bill of*. The distinction between bills of revivor and bills in the nature of bills of revivor, seems to be, that the former, in case of death, are founded upon mere privity of blood or representation by operation of law; the latter in privity of estate or title by the act of the party. In the former case, nothing can be in contest, except where the party be heir or personal representative; in the latter, the nature and operation of the whole act, by which the privity of estate or title is created, is open to controversy.

REVIVOR AND SUPPLEMENT, *bill of*. This bill is a mere compound of the two preceding species of bills, and in its separate parts it must be framed and proceeded upon in the same manner. It becomes proper where not only an abatement has taken place in a suit, but defects are to be supplied, or new events are to be stated which have arisen since the commencement of the suit. Thus, if a suit become abated, and by any act besides the event by which the abatement happens, the rights of the parties are affected, as by a settlement or a devise,

under certain circumstances, though a bill of revivor merely may continue the suit, so as to enable the parties to prosecute it, yet to bring before the court the whole matter necessary for its consideration, the parties must, by supplemental bill, added to and made part of the bill of revivor, show the settlement or devise, or other act by which their rights are affected. *Story's Eq. Plead.* 309.

REVOCATION, the calling back of a thing granted; or a destroying or making void of some deed that had existence until the act of revocation made it void. It may be either *general*, of all acts and things done before; or *special*, to revoke a particular thing. 5 *Rep.* 90.

REVOCATION OF WILL. There are now only four modes in which a will can be revoked, viz.:—1, by another inconsistent will, or writing executed in the same manner as the original will; 2, by burning, or any other act of the same nature; 3, by the disposition of the property by the testator in his lifetime; 4, by marriage. By the 1st and 3d of these modes, the will may be revoked either entirely or in part; by the 2nd and last, the revocation will be complete. 2 *Sug. V. & P.* 255.

REVOCATIONE PARLIAMENTI, an ancient writ for recalling a Parliament. 4 *Inst.* 44.

REWARDS, recompense for anything done.

In order to encourage the apprehending of certain felons, rewards and immunities were heretofore bestowed on such as brought them to justice, by several statutes; most of them have been repealed.

By 39 & 40 Geo. III., c. 89, § 8, persons discovering or apprehending any offender concealing or embezzling royal stores, or being guilty of any offence against that act or the 9 & 10 Wm. III., c. 41, not prosecuted in a summary way, shall, on conviction, receive a reward of 20*l.* over the share of penalty, if not more than that sum.

The 7 Geo. IV., c. 64, § 28, enables the courts to order the sheriff of the county in which certain enumerated offences have been committed, to pay to the person active in or towards the apprehension of persons charged with murder, felonies, shooting, or attempting to shoot, stabbing, cutting, or poisoning, or administering anything to procure miscarriage, or with rape, burglary, or felonious housebreaking, bullock stealing or sheep stealing, or with being accessory before the fact to any of such offences, or to receiving, knowingly, any stolen property, such sum as to the court shall seem reasonable, and sufficient to compensate such person for their expence, exertion, and loss of time. By section 29, such orders are directed to be paid by the sheriff, who shall be forthwith reimbursed by the treasury. By section 30, if a man be killed in attempting to take such offenders, the court may order compensation to his wife or relatives.

By 7 & 8 Geo. IV., c. 29, § 58, persons corruptly taking money or reward to help

any person to any chattel, money, &c., stolen, or unlawfully obtained or converted (unless they bring the offender to justice), are guilty of felony, and may be transported for seven years, or imprisoned, &c.

By section 59, advertising a reward for the restitution of stolen or lost goods, and using words purporting that no questions will be asked, &c., or printing or publishing such advertisement, incurs a penalty of 50*l.*, recoverable by action.

Rex est caput et salus reipublicæ. 4 Co. 124.—(The king is the head and guardian of the commonwealth.)

Rex est legalis et politicus. Lane, 27.—(The king is both legal and politic.)

Rex est lex vivens. Jenk. Cent. 17.—(The king is the living law.)

Rex est major singulis, minor universis. Bract., lib. 1, c. 8.—(The king is greater than any single person: less than all.)

Rex est monarcha et imperator in regno suo. Dav. 61.—(The king is monarch and emperor in his own kingdom.)

Rex est persona mixta; medicus regni; pater patriæ; et sponsus regni. 11 Co. 80.—(The king is a mixed person; the physician of the state, the father of the country, and the husband of the kingdom.)

Rex est persona sacra et mixta cum sacerdote. 5 Co. Eccl. L.—(The king is a sacred person, and mixed with the priesthood.)

Rex hoc solum non potest facere quod non potest injustè agere. 11 Co. 72.—(The king can do every thing but an injury.)

Rex in regno suo non habet parem.—(The king has no equal in his own kingdom.)

Rex ipse non debet esse sub homine sed sub Deo et lege, quia lex facit regem; attribuat igitur rex—legi quod lex attribuit ei, viz., dominationem et imperium, non est enim rex ubi dominatur voluntas et non lex. 4 Co. Ad. Lect.—(The king himself ought not to be under the dominion of man, but only under that of God and of the law, because the law makes the king; let, therefore, the king render to the law what the law renders to him, viz., domination and command, for where the will and not the law commands, there is no king.)

Rex non debet judicare sed secundum legem. Jenk. Cent. 9.—(The king ought to govern only according to law.)

Rex non potest fallere, nec falli. Jenk. Cent. 48.—(The king is not able to deceive, nor be deceived.)

Rex nunquam moritur.—(The king never dies.)

Rex præsumitur habere omnia jura in scrinio pectoris sui. Co. Lit. 99.—(The king is presumed to have all the laws in the recess of his own breast.)

Rex prosequi in judicis potest in quâ curiâ sibi visum fuerit. Jenk. Cent.—(The king can proceed to judgment in whatever court he pleases.)

Rex quod injustum est facere non potest. Jenk. Cent. 9.—(The king cannot do what is unjust.)

Rex semper præsumitur attendere ardua regni

pro bono publico omnium. 4 Co. 56.—(The king is always presumed to attend to the difficulties of the realm, for the public good of all.)

Rex summus dominus supra omnes. 2 Inst. 501.—(The king is the great lord over all.)

Rex tuetur legem et lex tuetur jus. Co. Lit. 130.—(The king protects the law, and the law protects right.)

RHANDIR, a part in the division of Wales before the Conquest: every township comprehended four gavels, and every gavel had four rhandirs, and four houses or tenements constituted every rhandir. *Taylor's Hist. Gav.* 69.

RIAL [*reale*, Span., royal money], a piece of gold coin current for 10*s.* in the reign of Henry VI., at which time there were half rials and quarter rials, or rial farthings. In the beginning of Queen Elizabeth's reign, golden rials were coined at 15*s.* a piece; and in James I. there were rose rials of gold at 30*s.*, and spur rials at 15*s.* *Lowndes' Essay on Coins*, 38.

RIBAND, a rogue, vagrant, whoremonger; a person given to all manner of wickedness.

RIDER, an inserted leaf; an additional clause to a bill passing through Parliament.

RIDER-ROLL, a schedule or small piece of parchment, often added to some part of a roll, record, or act of Parliament.

RIDING ARMED. The offence of riding or going armed with dangerous or unusual weapons, is a misdemeanor, tending to disturb the public peace by terrifying the good people of the land. 4 *Step. Com.* 281.

RIDING CLERK, one of the six clerks in Chancery, who, in his turn, for one year, kept the controlment books of all grants that pass the Great Seal. The six clerks are abolished.

RIDINGS [corrupted from *trithings*], the names of the parts or divisions of Yorkshire, which are three, viz., East Riding, North Riding, and West Riding.

RIENS ARREAR, a plea used in an action of debt for arrearages of account, whereby the defendant alleges that there is nothing in arrear.

RIENS PASSE PER LE FAIT (nothing passes by the deed), the form of an exception taken in some cases to an action on a deed.

RIENS PER DESCENT (nothing by descent), the plea of an heir where he is sued for his ancestor's debts, and has no land from him by descent or assets in his hands. 3 *Cro.* 151.

RIER or **REER-COUNTY** [*retro-comitatus*], close county, in opposition to open county. It appears to be some public place which the sheriff appoints for the receipt of the king's money after the end of the county court. Fleta says it is *dies crastinus post comitatum.* *Encyc. Lond.*

RIFFLARE [*riefe*, Sax.], to take away any thing by force.

RIGHT [*recht*, Germ. and Tent., *ritto*, Ital., *rectus*, Lat. The application of the same word to denote a straight line and moral rectitude of conduct, has obtained in every

language I know. *Dugald Stewart*], in its primitive sense, that which the law directs: in popular acceptation, that which is so directed for the protection and advantage of an individual, is said to be his right. 1 *Stark. Evid.* 1, n. (6).

RIGHT, *writ of*, the highest writ in the law, sometimes called, to distinguish it from others of the droitual class, the writ of right proper. Abolished by 3 & 4 *Wm. IV.*, c. 27.

RIGHT CLOSE, *writ of*, an abolished writ which lay for tenants in ancient demesne, and others of a similar nature, to try the right of their lands and tenements in the court of the lord exclusively.

RIGHT IN COURT. See **RECTUS IN CURIA**.

RIGHTS, *bill of*. See **BILL OF RIGHTS**.

RIGHTS, *petition of*, a parliamentary declaration of the liberties of the people, assented to by Charles I. in the beginning of his reign.

RIOT, a tumultuous disturbance of the peace by three persons or more, assembling of their own authority, with an intent mutually to assist one another against any who shall oppose them in the execution of some enterprise of a private nature, and afterwards actually executing the same in a violent and turbulent manner to the terror of the people, whether the act intended were of itself lawful or unlawful. The punishment for riots not falling under the predicament expressed in the Riot Act, is fine and imprisonment, to which hard labour may, by 3 *Geo. IV.*, c. 114, be superadded.

As to riots at elections, see 2 *Wm. IV.*, c. 45, § 70.

RIOT ACT, 1 *Geo. I.*, st. 2, c. 5, amended, as to punishment, by 7 *Wm. IV.* and 1 *Vict.*, c. 91.

RIOTOUS ASSEMBLING. If twelve or more persons assemble unlawfully, to the disturbance of the peace, and do not disperse after proclamation, they are felons. See **Riot Act**.

RIOTOUSLY DEMOLISHING BUILDINGS or MACHINERY. By 7 & 8 *Geo. IV.*, c. 30, § 8, amended, as to punishment, by 4 & 5 *Vict.*, c. 56, § 2, explained by 6 & 7 *Vict.*, c. 10, if any persons riotously and tumultuously assemble together to the disturbance of the public peace, shall unlawfully and with force demolish, pull down, or destroy, or begin to demolish, pull down, or destroy any church or chapel, or any house, or other such buildings or machinery as in the act mentioned, every such offender shall be guilty of felony, and may be transported for life, or any term not less than seven years, or imprisoned, with or without hard labour, for any term not more than three years.

By 7 & 8 *Geo. IV.*, c. 31, § 23, if any church or chapel, house, or such buildings or machinery as in the act mentioned, shall be feloniously demolished, wholly or in part, by persons riotously and tumultuously assembled together, the inhabitants of the hundred shall be liable to yield full com-

pensation, provided that the persons damaged, or such of them as have knowledge of the circumstances, or the servants who had the care of the property, shall, within seven days, go before some justice of the peace, residing near and having jurisdiction, and state upon oath the names of the offenders, if known, and submit to examination touching the circumstances, and become bound by recognizance to prosecute; and provided also, that any action against the hundred be commenced within three calendar months after the offence. The time is extended to two years. 5 & 6 *Vict.*, c. 97, § 5.

RIPARIA, a river, or water running between the banks.

RIPTOWELL, a gratuity or reward given to tenants after they had reaped their lord's corn.

RIVAGE or RIVAGIUM, a toll anciently paid to the Crown on some rivers for the passage of boats or vessels therein.

RIVEARE, to have the liberty of a river for fishing and fowling.

RIVERS, *injuries to*, common nuisances. 7 & 8 *Geo. IV.*, c. 30, § 12.

RIXATRIX COMMUNIS, a common scold. 4 *Step. Com.* 300.

ROBBERY, the unlawful and forcible taking, from the person of another, of goods or money, to any value, by violence or putting him in fear.

1. There must be an unlawful taking, otherwise it is no robbery.

2. It is immaterial of what value the thing taken is: a penny, as well as a pound, thus forcibly extorted, makes a robbery.

3. The taking must be by force or a previous putting in fear, which makes the violation of the person more atrocious than privately stealing. For, according to the civil law maxim, *qui vi rapuit, fur improbius esse videtur*. This previous violence or putting in fear is the criterion that distinguishes robbery from other larcenies. 4 *Step. Com.* 165.

ROBERDSMAN or ROBERTSMAN, a bold and stout robber or night-thief, so called from Robin Hood, the famous robber, but perhaps a corruption of *robber's-man*.

ROBES, *master of the*, an officer of the household, who has the ordering of the sovereign's robes. He has several officers under him, as a clerk of the robes, a yeoman, three grooms, a page, a brusher, furrier, sempstress, laundress, starcher, and standing wardrobe keepers, at St. James's, Windsor Castle, Hampton Court, &c. There is also a mistress of the robes and two keepers of the robes.

ROD, a measure of sixteen feet and a half long, otherwise called a perch.

ROD KNIGHTS, certain servitors who held their land by serving their lords on horseback.

ROGATION WEEK [*rogando Deus*, Lat., petitioning God], the second week before Whit Sunday; thus called from three fasts observed therein, the Monday, Tuesday, and

Wednesday, called rogation days, because of the extraordinary prayers and processions then made for the fruits of the earth, or as a preparation for the devotion of Holy Thursday.

Rogationes, questiones, et positiones debent esse simplices. Hob. 143.—(Demands, questions, and positions, ought to be simple.)

ROGUE [Horne Tooke pronounces it the past participle of the Saxon *wrgan*, and means covered, cloaked. *Dict. of Parley. II.*, 227. Rogues in our old books are "sturdy beggars." This is the earliest acceptance of the word. I conceive it therefore to descend from the Dutch *prachgen*, to go a begging, whence our *prog*, written also *progue*, a word of bad meaning; and thence, omitting *p*, the word before us. *Todd*], a wandering beggar, vagrant, vagabond. See **VAGRANCY**.

ROGUS, a funeral pile; a great fire wherein dead bodies were burned; or a pile of wood. *Claus. 5 Hen. III.*

ROLL, a schedule of parchment that may be turned up with the hand in the form of a pipe. All pleadings, memorials, and acts of court are entered on rolls, and filed with the proper officers, and then they become the records of the court.

ROLL OF COURT, the court roll in a manor, wherein the business of the court, the administrations, surrenders, names, rents, and services of the tenants are copied and enrolled.

ROLLS, *master of the*. See **MASTER OF THE ROLLS**.

ROLLS OFFICE OF THE CHANCERY, an office in Chancery Lane, London, which contains rolls and records of the High Court of Chancery, the master whereof is the second person in the Chancery, &c. The Rolls Court is here held when the Master of the Rolls sits during vacation.

This house or office was anciently called, *Domus Conversorum*, as being appointed, by King Henry III., for the use of converted Jews, but their irregularities occasioned King Edward II. to expel them thence, upon which the place was deputed for the custody of the rolls. *Encyc. Lond.*

ROLLS OF THE EXCHEQUER, there are several in this court relating to the revenue of the country.

ROLLS OF PARLIAMENT, the manuscript registers of the proceedings of our old Parliament; in these rolls are likewise a great many decisions of difficult points of law, which were frequently, in former times, referred to the determination of this supreme court by the Judges of both benches, &c.

ROLLS OF THE TEMPLE. In the two Temples is a roll called the calves-head roll, wherein every bench, barrister, and student is taxed yearly; also, meals to the cook and other officers of the houses, in consideration of a dinner of calves-head provided in Easter Term. *Orig. Jurid.* 199.

ROMAN CATHOLICS, *relief of*. There are several statutes upon this subject, the prin-

cipal of which are, 10 Geo. IV., c. 7; 2 & 3 Wm. IV., c. 115; 7 & 8 Vict., c. 102.

ROMA PEDITÆ, pilgrims that travelled to Rome on foot.

ROME-SCOT or **ROME-PENNY**, Peterpence: which see.

ROMNEY MARSH, a tract of land in Kent, governed by certain ancient and equitable laws of sewers, from which commissioners of sewers may receive light and direction. 4 Inst. 276.

ROOD or **HOLY ROOD**, holy cross.

ROOD OF LAND, the fourth part of an acre in square measure, or 1210 square yards.

ROPE-DANCERS, public nuisance, and may, upon indictment, be suppressed and fined. 1 Hawk. P. C. 75, § 6.

ROULETTE AND ROLY POLY. See **GAMING**.

RON, a kind of rushes, which some tenants were obliged by their tenure to furnish their lords withal.

ROSLAND, heathy ground or ground full of ling; also, watery and moorish land. 1 Inst. 5.

ROTHER-BEASTS, oxen, cows, steers, heifers, and such like horned beasts.

ROTULUS WINTONIÆ (the roll of Winton), an exact survey of all England, made by Alfred, not unlike that of Domesday; and it was so called for that it was kept at Winchester, among other records of the kingdom; but this roll, time has destroyed. *Inqulpt. Hist.* 516.

ROUT, a disturbance of the peace by persons assembling together with an intention to do a thing, which, if it be executed, will make them rioters, and actually making a motion towards the execution thereof.

ROYAL BURGHS, incorporations in Scotland, created by royal charter, giving jurisdiction to the magistrates within certain bounds, and vesting certain privileges in the inhabitants and burghesses. A burgh is called a royal burgh if it hold of the Crown; if it hold of a subject it is termed a burgh of barony. 3 & 4 Wm. IV., c. 46; 3 & 4 Wm. IV., c. 77, explained by 4 & 5 Wm. IV., c. 87.

ROYALTIES, regalities, royal property.

Roy est l'original de tous franchises. Keilw. 138.—(The king is the original of all franchises.)

Roy n'est lie per aucun statute si il ne soit expresslyment nome. Jenk. Cent. 307.—(The king is not bound by a statute, unless expressly named.)

Roy poet dispenser ope malum prohibitum, mais non malum per se. Ibid.—(The king can grant a dispensation for a prohibited evil, but not for a thing criminal in itself.)

RUBRIC, directions printed in books of law and in prayer-books, so termed because they were originally distinguished by being in red ink.

RUBRIC OF A STATUTE, its title, which was anciently printed in red letters. It serves to shew the object of the legislature, and thence affords the means of interpreting

the body of the act. Hence the phrase of an argument, *à rubro ad nigrum*.

RUBRICAS, constitutions of the church, founded upon the statutes of uniformity and public prayer, viz., 5 & 6 Edwd. VI., c. 1; 1 Eliz., c. 2; 13 & 14 Car. II., c. 4.

RUDMAS-DAY [*rode*, Sax., cross and mass-day], the feast of the holy cross; there are two of these feasts, one on the third of May, the invention of the cross, and the other on the fourteenth of September, called holy rood-day, the exaltation of the cross.

RULES, orders regulating the practice of the courts, or orders made between parties to an action or suit.

At common law, rules on the plea side of the courts are *common*, being obtained from the master, without any assistance of counsel; or *special*, obtained through means of that assistance.

Those granted upon motion by counsel may be classed under the following heads: 1st. Those which are granted upon the motion paper, being merely signed by counsel without any motion being actually made in court. 2ndly. Those which are considered so much as a matter of course, that the grounds of the motion are not particularized by counsel, and where, in some instances, counsel may hand the motion paper to one of the masters, without making the motion *vivâ voce*; and, 3rdly. Those which are granted upon the grounds of the motion being particularized by counsel.

The first class of the above rules are absolute in the first instance; the second and third are either absolute in the first instance, or rules to show cause, commonly called rules *nisi*, which are made absolute after service, unless good cause shown to the contrary.

The following rules are obtained upon a judge's fiat, without motion of counsel:—

That an infant be admitted to sue by *prochein amy* or guardian.

That an infant be admitted to defend by guardian.

That plaintiff may sue in *formâ pauperis*.

To discharge a prisoner, upon bail being justified in vacation.

For a *distringas* in non-bailable actions in vacation.

To change the *venue* in vacation.

To plead several matters, not enumerated in the rule T. T., 1 Wm. IV.

To compute in vacation.

For leave to sign judgment on a *scire facias*, where defendant was not summoned.

That a writ of enquiry be executed before a judge at *Nisi Prius*.

For making a submission to arbitration a rule of court.

The following rules are obtained from the master upon a *præcipe*:—

Rule to plead generally.

To plead in *scire facias*.

To avow in replevin.

For a view.

To appear to a *scire facias*.

For judgment on demurrer.

For judgment on *nul tiel* record.

For judgment on *scire facias*.

For judgment in error.

The following rules are obtained directly from the master, without a *præcipe*:—

Rule to declare in replevin.

To appear in replevin.

To reply, rejoin, surrejoin, &c.

That the defendant produce the record on *nul tiel* record.

To return the *certiorari* in error to the Court of Queen's Bench or Common Pleas.

For better bail in error.

To return the *certiorari* in error to the Exchequer Chamber.

The following is a list of most of the side bar rules, which are had of the Masters upon a *præcipe* or memorandum:—

Rule that the sheriff return the writ.

That the sheriff bring in the body.

For time to declare.

For special imparlance.

For leave to pay money into court under 3 & 4 Wm. IV., c. 42, § 21.

For leave to discontinue before verdict, &c.

To be present at the taxing of costs, unless where notice of taxation is required to be given.

For a *scire facias* to revive a judgment more than seven years old, and not ten.

For the marshal or warden to acknowledge the defendant in his custody.

The consent rule in ejectment.

The following is a list of the pleas which may be pleaded together, or any two or more of them, under the rule Trinity Term, 1 Wm. IV., obtained from the Masters upon the engrossment of the pleas, or draft or copy thereof:—

Non assumpsit.

Nunquam indebitatus.

Non detinet, with or without a plea of tender as to part.

Statute of Limitations.

Set-off.

Bankruptcy of defendant.

Discharge under an insolvent act.

Plenè administravit.

Plenè administravit præter.

Infancy.

Coverture. *Chit. Arch. Prac.* 1184.

RULE IN SHELLEY'S CASE. See **SHELLEY'S CASE**.

RUNCARIA, land full of brambles and briars. 1 *Inst.* 5, a.

RUNCILUS, RUNCINUS, a load-horse, sumpter-horse, cart-horse. *Cowell*.

RUNDLET or **RUNLET**, a measure of wine, oil, &c., containing eighteen gallons and a half. 1 *R. III.*, c. 13.

RUNNING-DAYS. See **LAY DAYS**.

RUNRIG LANDS. In Scotland, lands where the ridges of a field belong alternately to different proprietors. Anciently, this kind

of possession was advantageous in giving an united interest to tenants to resist inroads. By the Act 1695, c. 23, a division of these lands was authorised, with the exception of lands belonging to corporations.

RUPTARII or **RUTTARII**, soldiers, or rather robbers.

RUPTURA, arable land or ground broke up.

RURAL DEANERY, the circuit of the archdeacons and rural deans' jurisdiction: every rural deanery is divided into parishes.

RURAL DEANS, very ancient officers of the church, but almost grown out of use, though their deaneries still subsist as an ecclesiastical division of the diocese or archdeaconry. They seem to have been deputies of the bishop, planted all round his diocese, the better to inspect the conduct of the parochial clergy, to inquire into and report dilapidations, and to examine the candidates for confirmation, and armed, in minuter matters, with an inferior degree of judicial and coercive authority. 3 *Step. Com.* 69.

RUSTICI, churls, clowns, or inferior country tenants, who held cottages and lands by the services of ploughing, and other labours of agriculture, for the lord. The land of such ignoble tenure was called by the Saxons *gafalland*, as afterwards socage tenure, and was sometimes distinguished by the name of *terra rusticorum*. *Paroch. Antiq.* 136.

RYOT, a renter of land in Hindostan.

S

SABBATH, *profanation of*, commonly, but improperly, called *Sabbath breaking*, an offence against religion; for it is deemed to be a violation of the divine law, both under the old and new dispensations, and is in fact a notorious indecency and scandal. It is therefore punished by various statutes. 4 *Step. Com.* 239.

SABBATUM, the Sabbath; also, peace. *Domesday*.

SABBULONARIUM, a gravel pit, or liberty to dig gravel and sand; also, money paid for the same.

SAC, the privilege enjoyed by a lord of a manor, of holding courts, trying causes, and imposing fines.

SACA, cause, sake.

SACABURTH, **SACABERE**, **SAKABERE**.

He that is robbed, or by theft deprived of his money or goods, and puts in surety to prosecute the felon with fresh suit. The Scots term it *sikerborgh*. *Spelm.*

SACCULARII, cut-purses. *Roman Term.*

SACCUS CUM BROCHIA, a service or tenure of finding a sack and a broach (pitcher) to the sovereign for the use of the army. *Bract. l. 2, c. 16.*

SACRAMENT, *reviling the*, an indecent and arrogant crime against religion, punished by fine and imprisonment. 1 *Edw. VI.*, c. 1; 1 *Eliz.*, c. 1; 1 *Eliz.*, c. 2.

SACRAMENTUM, an oath.

Sacramentum, à sacra et mente, quia jurare est

Deum in testem vocare, et est actus divini cultus. 3 *Inst.* 165.—(An oath, "*sacramentum*," so called from *sacra*, sacred, and *mente*, with a mind, because to swear is to call God as a witness, and is an act of divine worship.)

Sacramentum habet in se tres comites, veritatem, justitiam et judicium: veritas habenda est in jurato, justitia et judicium in iudice. 3 *Inst.* 160.—(An oath has in it three component parts, truth, justice, and judgment: truth is requisite in the party swearing, justice and judgment in the Judge administering the oath.)

Sacramentum si fatuum fuerit, licet falsum, tamen non committit perjurium. 2 *Inst.* 167.—(A foolish oath, though false, makes not perjury.)

SACRILEGE, larceny from a church.

By 7 & 8 *Geo. IV.*, c. 29, § 10, amended, as to punishment, by 5 & 6 *Wm. IV.*, c. 81, and 6 & 7 *Wm. IV.*, c. 4, if any person shall break and enter any church or chapel, and shall steal therein any chattel, or, having stolen any chattel in any church or chapel, shall break out of the same, he shall be transported for life, or not less than seven years, or imprisoned for not more than three years, with hard labour and solitary confinement, at the discretion of the court or Judge, during the period of imprisonment.

Sacrilegus omnium prædonum cupiditatem et scelera superat. 4 *Co.* 106.—(Sacrilege transcends the cupidity and wickedness of all other thefts.)

SACRISTA, a sexton, anciently called *sager-son* or *sagiston*.

SADBERGE, a denomination of part of the county palatine of Durham. *Camd. Brit.*

SÆMEND, an umpire, arbitrator. *Anc. Inst. Eng.*

Sæpenumero ubi proprietas verborum attenditur sensus veritatis amittitur. 7 *Co.* 27.—(Many a time where the propriety of words is attended to, the meaning of truth is lost.)

Sæpe viatorem nova non vetus orbita fallit. 4 *Inst.* 34.—(A new road, not an old one, often deceives the traveller.)

SAFE-CONDUCT, convoy; guard through an enemy's country. It is a prerogative of the Crown to grant safe-conducts.

SAFE-GUARD, a protection of the Crown to one who is a stranger, that fears violence from some of its subjects, for seeking his right by course of law. *Reg. Orig.* 26.

SAFE-PLEDGE, a surety appointed for one's appearance at a day assigned. *Bract. l. 4.*

SAGAMAN, a tale-teller; secret accuser.

SAGIBARO, **SACHBARO**, a judge. *Leg. Juc.* c. 6.

SAID, aforesaid.

SAINT MARTIN LE GRAND, court of, the chief of the several courts in London are the sheriffs' courts, holden before their steward or Judge, from which a writ of error lies to the court of hustings, before the mayor, recorder, and sheriffs; and from thence to justices appointed by the royal

commission, who used to sit in the Church of St. Martin le Grand; and from the judgment of those justices a writ of error lies immediately to the House of London. *F. N. B.* 32.

SAIO [*sagol*, Sax., a staff], a tipstaff or serjeant at arms.

SALADINE, a tax imposed in England and France, in 1188, by Pope Innocent III., to raise a fund for the crusade undertaken by our Richard I. and Philip Augustus of France, against Saladin, Sultan of Egypt, then going to besiege Jerusalem.

This tax was thus laid:—that every person who did not enter himself a crusader was obliged to pay a tenth of his yearly revenue and of the value of all his movables, except his wearing apparel, books, and arms.

The Carthusians, Bernardines, and some other religious persons, were exempted from the saladine.

Gibbon remarks, that, when the necessity for this tax no longer existed, the church still clung to it as too lucrative to be abandoned, and thus arose the tithing of ecclesiastical benefices for the benefit of the pope or other sovereigns. *Encyc. Lond.*

SALARY, a recompence or consideration made to a person for his pains and industry in another person's business; also, wages, stipend, or annual allowance. *Cowell.*

The ancients derive the word from *sal*, salt (*Plin. H. n.* xxxi. 41); the most necessary thing to support human life being thus mentioned as a representative for all others. *Salarium*, therefore, composed all the provisions with which the Roman officers were supplied, as well as their pay in money. In the time of the republic, the name *salarium* does not appear to have been used; it was Augustus who, in order to place the governors of provinces and other military officers in a greater state of dependence, gave salaries to them, or certain sums of money, to which afterwards various supplies in land were added. *Smith's Dict. of Antiq.*

SALE, the act of selling.

SALIC or **SALIQUE** [*lex salica*], an ancient and fundamental law of the kingdom of France, usually supposed to have been made by Pharamond, or at least by Clovis, in virtue of which males only are to inherit.

Some, as Postellus, will have it to have been called *Salic*, *q. d.*, *Galic*, because peculiar to the Gauls. Cenal takes the reason to be, that the law was only ordained for the royal *salles* or palaces. Fer. Montanus insists it was because Pharamond was at first called *Salicus*; others, with the Abbot of Usperg, derive its name from Salogast, Pharamond's principal minister; and others from the frequent repetition of the words *si aliqua*, at the beginning of the articles. The most probable opinion is that which derives the word from the ancient Franks, who were called *Sali*, *Salici*, and *Salinge*, on account of the Sala, a river of ancient Germany. Bouterone gives another plausible

origin to the word: he says it comes from the word *salich*, which, in the old Teutonic language, signified salutary; and that the French in this law imitated the policy of the ancient Romans, who made salutary laws, which the magistrates were to have before them when they administered justice. This he confirms by a curious figure taken out of the *Notitia Imperii*, where the book is represented covered with gold, with the inscription, *leges salutarie*.

It is a popular error to suppose that the Salic law was established purely on account of the succession to the Crown, since it extends to private persons as much as those of the royal family.

The Salic law had not in view a preference of one sex to the other, much less had it a regard to the perpetuity of a family, a name, or the succession of land. It was purely a law of economy which gave the house, and the land dependent on the house, to the males who should dwell in it, and to whom it consequently was of most service.

In proof of this, the title of allodial lands of the Salic law is subscribed:—

1. If a man die without issue, his father or mother shall succeed him.

2. If he have neither father nor mother, his brother or sister shall succeed him.

3. If he have neither brother nor sister, the sister of his mother shall succeed him.

4. If his mother have no sister, the sister of his father shall succeed him.

5. If his father have no sister, the nearest relation by the male shall succeed.

6. Not any part of the Salic land shall pass to the females, but it shall belong to the males, *i. e.*, the male children shall succeed their father. *Encyc. Lond.*

SALT DUTY IN LONDON, a custom in the city of London called *granage*, payable to the Lord Mayor, &c., for salt brought to the port of London, being the twentieth part.

SALT-SILVER, one penny paid at the feast day of St. Martin, by the tenants of some manors, as a commutation for the service of carrying their lord's salt from market to his larder. *Paroch. Antiq.* 496.

SALTUS, a high thick wood or forest.

Salus populi est suprema lex. 13 Co. 139.—

(The health of the people is the first law.)

Salus ubi multi consilarii. 4 Inst. 1.—

(Where there are many counsellors, there is safety.)

SALUTE, a coin made by Henry V. after his conquests in France, whereon the arms of England and France were stamped and quartered. *Stowe's Chron.* 589.

SALVAGE, an allowance or compensation made to those by whose exertions ships or goods have been saved from the dangers of the seas, fire, pirates, or enemies.

This was allowed by the laws of Rhodes, Oleron, and Wisby, and has been followed by all modern maritime states. At common law, the party who has saved the goods of another from loss or any imminent peril, has a lien upon them, and may retain them

in his possession till payment of a reasonable salvage.

If the salvage be performed at sea, or within high or low water mark, the Court of Admiralty has jurisdiction over the subject, and will fix the sum to be paid, and adjust the proportions, and take care of the property pending the suit; or, if a sale be necessary, direct it to be made, and divide the proceeds between the salvors and the proprietors, according to equity and reason. And in fixing the rate of salvage, the court usually has regard, not only to the labour and peril incurred by the salvors, but also to the situation in which they may happen to stand in respect of the property saved, to the promptitude and alacrity manifested by them, and to the value of the ship and cargo, as well as the degree of danger from which they were rescued. Sometimes the court has allowed as large a proportion as a half of the property saved as salvage; and in others, not more than a tenth.

The crew of a ship are not entitled to salvage or any unusual remuneration for the extraordinary efforts they may have made in saving her; it being their duty as well as interest to contribute their utmost upon such occasions, the whole of their possible service being pledged to the master and owners. Neither are passengers entitled to claim anything for the ordinary assistance they may have been able to afford to a vessel in distress. But a passenger is not bound to remain on board a ship in the hour of danger, provided he can leave her; and if he performs any extraordinary service, he is entitled to a proportional recompence. *Marshall on Insur*, b. 1, c. 12, § 8; *Park on Insurance*, c. 8; *Abbott on the Law of Shipping*, p. iii. c. 10.

SALVO [*salvo jure*], an exception, reservation, or excuse.

SALVOR, a person who renders assistance to a ship or vessel in distress, whereby he becomes entitled to a reward. See **SALVAGE**.

SAMPLE, a small quantity of a commodity exhibited at public or private sales as a specimen. Where goods are warehoused, certain small specified quantities are, by the regulations at the Custom House, allowed to be taken out as samples without payment of duty.

SANCTA, the reliques of the saints, upon which oaths were made.

SANCTUARY, a place privileged for the safeguard of offenders' lives, being founded on the law of mercy, and the great reverence and devotion which the prince bears to the place whereunto he grants such privilege.

In Scotland, they call the sanctuary *girtholl* or *gyrthol*; the Saxons called it *frod-mortel* and *fridstoll*.

All privilege of sanctuary, and abjuration consequent thereon, is utterly taken away and abolished. 21 *Jac. I.*, c. 28.

SAND-GAVEL, a payment due to the lord of the manor of Rodley, in the county of

Gloucester, for liberty granted to the tenants to dig sand for their common use.

SANE MEMORY, perfect and sound mind and memory to do any lawful act, &c.

SANGUINEM EMERE, a redemption, by villeins, of their blood or tenure, in order to become freemen.

SANGUIS, the right or power which the chief lord of the fee had to judge and determine cases where blood was shed.

SANIS [*σῶς*, Gk.], a kind of punishment among the Greeks, inflicted by binding the malefactor fast to a piece of wood. *Encyc. Lond.*

Sapiens incipit a fine: et quod primum est in intentione, ultimum est in executione. 10 Co. 25.—(A wise man begins with the last: and what is first in intention, is last in execution.)

Sapiens omnia agit cum consilio. 4 Inst. 4.—(A wise man does everything advisedly.)

Sapientia legis nummario pretio non est æstimanda. Jenk. Cent. 168.—(The wisdom of the law cannot be valued by money.)

Sapientia judicis est cogitare tantum sibi esse premissum, quantum commissum et creditum. 4 Inst. 163.—(The part of a wise Judge is to consider as much what he premises as what he commits and believes.)

SANS NOMBRE, *common*, a common in gross, which is absolutely unlimited.

SARDIN-TIME [*sardare*, Lat.], the time or season when husbandmen weed their corn. *Cowell*.

SARCULATURA UNA, a tenant's service of one year's weeding for his lord. *Paroch. Antiq.* 403.

SARKELLUS, an unlawful net or engine for destroying fish.

SART, a piece of woodland turned into arable. See **ASSART**.

SASSONS, the corruption of Saxons; a name of contempt formerly given to the English, while they affected to be called Angles; they are still so called by the Welch.

SATISFACTION, legal compensation; the giving of recompence for an injury done, or the payment of money due and owing.

SATISFACTION ON THE ROLL, *entry of*. As soon as a judgment is satisfied, by payment, levy, or otherwise, the plaintiff, if required, must give the defendant a warrant or authority, addressed to some attorney of the court in which the judgment is, authorising him to enter up satisfaction on the roll. *Chit. Arch. Prac.* 456.

Satius est petere fontes quam secturi rivulos. 10 Co. 113.—(Better to search the fountains than to cut rivulets.)

SATURDAY'S STOP, a space of time from even-song on Saturday till sun-rising on Monday, in which it was not lawful to take salmon in Scotland and the northern parts of England. *Cowell*.

SAVER-DE-FAULT, to excuse. *Termes de Ley*.

SAVINGS' BANKS, institutions for the safe custody and encrease of the small savings of the industrious poor. When regulated ac-

ording to act of Parliament, certain benefits and protections are afforded to them by law. The statutes containing the regulations are the 9 Geo. IV., c. 92 (repealing several former provisions), 3 & 4 Wm. IV., c. 14, and 7 & 8 Vict., c. 83. The institutions, sanctioned by these acts, consist of banks to receive small deposits of money, the produce of which is to accumulate at compound interest, and the principal and interest whereof are to be paid out to the depositors as required, deducting only from the produce the necessary expenses of management. The deposits are not to exceed 30*l.* in the whole in any one year; and no fresh deposit is to be received when the sum to which the depositor is entitled amounts to 150*l.* And where the sum standing in the name of any depositor amounts to 200*l.* (principal and interest included), no interest shall be paid on such deposit so long as it remains at that amount. The management is vested in trustees, who are prohibited from receiving, directly or indirectly, any benefit from the institution; and are required to vest the money deposited (beyond what necessarily remains in the hands of the treasurer to answer exigencies,) in the bank of England or Ireland, as the case may require. The monies invested are to be carried to an account kept in the names of the commissioners for reduction of the National Debt, and denominated "The Fund for the Banks for Savings," which affords interest to the trustees at the rate of 3*l.* 5*s.* per cent. per annum, the arrears of which are to be carried half-yearly to the account of the principal. The interest payable to depositors is limited to 3*l.* 0*s.* 10*d.* per cent., but the acts permit its accumulation by yearly or half-yearly rests. By way of further protection to the funds of the society, every treasurer or cashier is to give security for the due execution of his office, and in case of his refusal to account to the trustees, or to pay over the monies in his hands, may be compelled to do so, in a summary way, by petition to the justices at quarter sessions. The trustees are also required to send to the office of the commissioners for reduction of the National Debt annual accounts, exhibiting the balance due to the depositors, and to affix publicly to some conspicuous part of the office of the savings' bank a duplicate of such account, and a list of the trustees and managers. To guard, on the other hand, against abuses of another description, no deposit is to be received without a disclosure of the name, occupation, and residence of the depositor, who is also at the same time, or at any other time, when required by the trustees, to sign a declaration that he is entitled to no benefit from any other bank of the same description; and it is provided, that if such declaration be untruly made, he shall forfeit his deposit. Provisions are also made of a nature calculated to save expense to the members of these institutions. In case of the decease of a depositor, whose estate does not exceed

50*l.*, no legacy duty attaches; and no stamp duty is payable on the probate or administration; and if any person die having a deposit not exceeding 50*l.*, exclusive of interest, and no will or letters of administration be produced within one month afterwards, the money may be paid to or among such person or persons as shall appear to the trustees or managers to be the widow, or entitled under the statute of distributions. Upon the same principle, it is directed that the trustees may pay by any deposit by a woman to the woman herself, unless her husband or his representative interfere, and that all disputes between the institution at large, and any of its members or representatives, shall be referred to a cheap method of arbitration pointed out for that purpose, and such cases are consequently withdrawn from the jurisdiction of the courts of law.

Any persons forming themselves into a society for the purpose of establishing a savings' bank, are entitled to claim for it the benefit of the parliamentary provisions, upon causing the rules and regulations which they shall frame for its management to be entered in a book, to be kept by one of its officers, for the inspection of depositors. It is, however, requisite that two copies of the rules should be submitted to a barrister officially appointed for that purpose, who is to certify whether the rules are in conformity to law and pursuant to the legislative enactments. And one of the copies so certified is to be returned to the trustees, and the other to be transmitted to the commissioners for reduction of the National Debt. 3 *Step. Com.* 231. See MILITARY SAVINGS' BANKS.

SAUNKEFIN, the determination of the lineal race; a descent of kindred. *Brit. c.* 119.

SAXON-LAGE, the law of the West Saxons.

SCABINI, wardens at Lynn, Norfolk.

SCALAM [*ad scalam*, Lat., at the scale], the old way of paying money into the exchequer.

SCANDAL, a report or rumour, or an action whereby one is affronted in public.

Scandal, in pleadings in equity, is calculated to do great and permanent injury to all persons whom it affects, by making the records of the court the means of perpetuating libellous and malignant slanders, and the court, in aid of the public morals, is bound to interfere to suppress such indecencies, which may stain the reputation, and wound the feelings of the parties and their relatives and friends.

"If that, which is stated," said Lord Eldon, "is material to the issue, it may be false, but cannot be scandalous; if relevant, it is not impertinent, though scandalous in its nature; if relevant and pertinent, it cannot be treated as scandalous; and if false, it must be dealt with in another way. But if irrelevant, and especially if also scandalous, there would be much greater reason to regret that a court should not be armed with the power to protect parties from the expense, and its records from the stain which too frequently arise from the introduction of

irrelevant and scandalous matter, upon affidavit, in this jurisdiction." *Exp. Simpson*, 15 Ves. 477. See IMPERTINENCE.

There was a stone of scandal raised in the great portal of the Capitol in Rome, whereon was engraven the figure of a lion, upon which bankrupts or cessionaries being seated bare-breached, cried, with a loud voice, *cedo bonis* (I surrender my effects); when, squatting their breech violently three times on the stone, they were acquitted. It was called the stone of scandal, because thenceforward the cessionary became intestable and incapable of giving any evidence. Julius Cæsar introduced this form of surrender, after abrogating that article of the laws of the Twelve Tables which allowed creditors to cut their insolvent debtors in pieces, and take each his member, or at least to make a slave of him. *Encyc. Lond.*

SCANDALUM MAGNATUM, words spoken in derogation of a peer or Judge, or other great officer of the realm. They are held to be particularly heinous, and though they may be such as would not be actionable in the case of a common person, yet, when spoken in disgrace of such high and respectable characters, they amount to an atrocious injury, which is redressed by an action on the case, founded on many ancient statutes, as well on behalf of the Crown, to inflict the punishment of imprisonment on the slanderer, as on behalf of the party, to recover damages for the injury sustained. But this action is now somewhat obsolete. 3 *Step. Com.* 473.

SCAVAGE, SCHEVAGE, SCHEWAGE, or SHEWAGE, a kind of toll or custom, exacted by mayors, sheriffs, &c., of merchant strangers, for wares shewed or offered for sale within their liberties. Prohibited by 19 Hen. VII., c. 7.

SCAVIDUS, the officer who collected the scavage money. *Cowell.*

SCEAT, a small coin among the Saxons equal to four farthings.

SCEITHMAN, a pirate or thief.

SCEPPA SALIS, an ancient measure of salt, the quantity now not known.

SCHAFFA, a sheaf.

SCHAR PENNY, SCHARN-PENNY, or SCHORN-PENNY, a small duty or compensation. *Cowell.*

SCHEDULE, a small scroll; a writing additional or appendant; a little inventory.

SCHETES, usury. *Cowell.*

SCHILLA, a little bell used in monasteries.

SCHIREMAN, a sheriff; the ancient name for an earl.

SCHIRRENS-GELD [*shiregeld*], a tax paid to sheriffs for keeping the shire or county court.

SCHISM-BILL, the name of an act passed in the reign of Queen Anne, which restrained Protestant dissenters from educating their own children, and forbad all tutors and schoolmasters being present at any conventicle or dissenting place of worship. The Queen died on the day when this act was to

have taken place (August 1, 1714), and the bill was repealed in the fifth year of George I.

SCIENTER, knowingly, wilfully.

SCILICET, that is to say, to wit.

This is not a direct and separate clause, nor a direct and entire clause, in a conveyance, but *intermedia*; neither is it a substantive clause of itself, but it is rather to usher in the sentence of another, and to particularize that which was too general before, or distribute that which was too gross, or to explain that which was doubtful and obscure; and it must neither increase nor diminish the premises or *habendum*, for it gives nothing of itself; but it may make a restriction where the precedent words are not so very express but that they may be restrained. *Hob.* 171.

Scientia sciolorum est mixta ignorantia. 8 Co. 159. — (The knowledge of smatterers is mixed ignorance.)

Scientia utrimque par pares contrahentes facit. 3 Burr. 1910. — (Equal knowledge on both sides makes the contracting parties equal.)

SCINTILLA JURIS ET TITULI (a spark of law and title).

The following exposition of this doctrine is taken from *Haye's Conveyancing*, vol. i. p. 62:—

A use might be destined to commence at a future period, as at Christmas next, or to arise upon a dubious event, as in favour of A. or B.'s return from Rome, or in favour of a person to be born or ascertained as a future child of A., inasmuch as a use of this nature had no determinate object, the statute could not presently convert it into a legal estate in the land. These uses were called future or contingent. If, before the statute, land had been conveyed to A., in fee, to the use of B. for life, and after B.'s death, to the use of his first son, B. having then no son in existence, for life, or in tail, and subject to those uses, to the use of C. and his heirs, it is clear that the whole use or beneficial interest would have been divided between B. and C., until the birth of a son, when the son would have acquired, and C. would have lost so much of the use or beneficial interest as the limitation to the son was intended to comprise. Now, after the statute which made the possession attend upon the use, it might be imagined that the land itself would be similarly affected; that until a son should come into existence, the limitations to B. and C. would absorb the whole legal estate; but that, on the birth of a son, the right to the possession, immediately after B.'s death; which right was previously vested in C., as tenant in fee, would change its object, and vest in such son as tenant in tail; and by reason simply of the direction originally given to the seisin in passing from A., the grantee, without any supplementary aid from the statute. As C. was a person ascertained, a person of whom it might be predicated, that if the life interest were removed, he would be entitled, no

son being yet born, to the actual enjoyment, his use was vested, and therefore, on the creation of the limitations, gave, under the statute, an estate in the land; and still, though vested, it was not absolutely fixed, for his presumptive title was liable to be in part defeated by the birth of a preferable claimant.

In explaining the process by which the after-born son takes, the vested uses of B. and C., are sometimes described as opening to let in the use in favour of the son; but we seem to express the whole effect more accurately and intelligibly, by stating simply, that a contingent right to the enjoyment, in respect of a portion of the fee, on being supplied with an ascertained object, becomes a vested right in the order of its limitation, then by a phrase which, literally understood, imports that the fee opens and admits part of its own substance.

This mode of reasoning, however, was too unaffected and direct; ingenious and opposite theories were advanced, and warm disputes arose; disputes which appear less justly referable to a laudable zeal for principle and consistency, than to a perverse desire that the imputation of craft and cunning, by which uses before the statute were sought to be discredited, should deservedly attach to their new condition. The alleged difficulty hinged upon the language of the statute, which, by providing in terms for those cases only "where any person or persons should be seised to the use of any other person or persons," required, as its too rigid expounders inferred, that the seisin to serve, and the capacity to take the use, should be co-existent. But how, at the time of the conveyance, could A., it was asked, be considered, in the instance of the unborn son, as seised to the use of any person? and how, on the birth of a son subsequently to the conveyance, when, by the undisputed operation of the statute, B. and C. had acquired vested estates, which exhausted the legal fee, was it possible that A. could have a seisin commensurate with the estate tail limited to the son, or any seisin whatever? It was admitted, that the uses limited to B. and C. were instantly transferred into possession, or, in other words, clothed with the legal estate; but by what process, compatible with that admission, and with the supposed conditions of the statute, the contingent use could take effect, was the grave question which embarrassed the profoundest lawyers.

Instead of regarding the seisin, which before the statute was at once equitably impressed, as being under the statute, at once legally impressed with all the uses, and thence drawing the conclusion, that through the operation of the statute, the use limited to the unborn son was a legal though a contingent disposition, and the use limited to C., a qualified, though a vested estate qualified, because liable to be affected by the vesting of the prior contingent disposition

each executed, or, in other words, clothed at law, according to the quality, manner, form, and condition of the use. Instead of adopting this obvious and only rational solution, some of the Judges considered that the words of the statute would be most aptly met by a fiction. This fiction consisted in holding, that although on the execution of the conveyance, the legal estate was wholly drawn out of A., and vested in B. and C., yet, in contemplation of law, A. had a possibility of regaining, whenever a son should be born (on what hypothesis short of a presumed reconveyance, they did not explain), a momentary seisin adequate to feed the use limited in his favour. Over this invention they cast the veil of latinity, and prudently withdrew it, under the learned appellation of "*scintilla juris et tituli*," from familiar examination. Westminster Hall resounded with the debate; the speeches of the eleven Judges, who delivered their opinions *seriatim*, occupied six days. The Lord Chief Justice Popham declared, that not to cherish the scintilla, would be to cast the whole commonwealth into a sea of troubles, and endanger it with utter confusion and drowning: the commonwealth had little to fear, but common sense was in imminent danger of perishing between the conflicting elements of fire and water. The scintilla has learned advocates and opponents to this hour, yet the profession, by a sort of tacit convention, seems to treat the point as purely speculative.

But extending our views beyond the mere phraseology of the statute to its spirit and effect, let us try the matter by the test of principles and facts, understood and admitted by all. We know that, before the statute, the use was merely a personal confidence in respect of the land, and that if the trustee conveyed the land to a purchaser without notice, the connexion between the use and the very subject to which it originally related, was dissolved, nothing remaining to the *cestui que use* but an equitable remedy against the trustee for compensation. We know too, that, before the statute, a contingent use, limited by way of remainder, was not liable to fail by the determination, during its suspense, of the previous interest on which it was expectant, in point of enjoyment.

But after the statute the case was altogether different. The use limited to the unborn son became so knit to the land that no conveyance of the legal estate to a purchaser, without notice, could possibly sever the connexion, and so amenable to the rules of law, that the determination, by forfeiture or otherwise, before the birth of a son of the particular estate, on which the limitation was now dependent in point of tenure, involved its destruction. The inference is plain: the destination in favour of the unborn son had lost, under the statute, its primitive character of a use, for, retaining that character, it would necessarily be affected on the one hand, by

the conveyance of the legal owner, and unaffected on the other, by accidents occurring to the prior use. But it could have lost its equitable character only by acquiring a legal character, which, again, it could not have acquired otherwise than through the agency of the statute. It must either have remained a use, conditioned as uses before the statute were conditioned, or have become, by force of the statute, a legal interest in the land. There was no intermediate state. The statute made no alteration in the condition of the use, short of the superinduction of the legal clothing. Then, are we not compelled to regard the use limited to the unborn son as having instantly put on, in common with its associate limitations, an essentially legal character? The deed, in truth, was no sooner executed than the statute, imbuing the use with legal qualities, converted it into a contingent remainder: a species of limitation so familiar to the old law, and so exactly agreeing in its nature and incidents with all that is laid down respecting the actual quality and condition, under the statute, of the contingent use in question, as to excite surprise that the identity should ever have been overlooked. When, after the statute, land was conveyed to uses, all the present uses in favour of objects ascertained were instantly converted into legal estates, while all the future and contingent uses, i. e., uses in favour of objects to be ascertained, were in the same instant converted into legal titles capable, in due season, of ripening into estates: for whatever might be the quality, form, manner, or condition of the use, whether shaped as an estate, right, possibility, privilege, or power, the use and legal interest passed, *uno flatu*, together in an instant. As upon a conveyance before the statute, to A. and his heirs, to the use B. for life, and, after his death, to the use of his first son, he having no son born, the disposition in favour of the son presently charged A., in respect of his possession of the land, with a contingent equitable title, so upon the like conveyance after the statute, the same disposition presently charged the land with a contingent legal title. In short, the effect, at the common law, of a conveyance to A., for life, remainder to his first and other unborn sons in tail, remainder to B. in fee, and the effect, under the statute, of a conveyance to C. and his heirs, to the use of A. for life, remainder to the use of the first and other sons of A. in tail, remainder to the use of B. in fee, were the very same; in either case the disposition in favour of the unborn sons, was, both, in nature and in name, a contingent remainder. Uses limited agreeably, in point of form, to the doctrines of tenure, adopted its laws and its language. Then take the case of a destination valid in equity before the statute in the form of a use, but inadmissible at the common law; as, for example, a limitation to the use of A. in fee, defeasible, in a given event, by a limitation to the use of B. Here, after the statute, the whole

legal estate was immediately vested in A., subject to the legal title of B. to the possession of the land on the happening of the contingency,—just that species of title which if the common law had endured such shifting destinations, B. would have taken under a direct conveyance to A. in fee, defeasible, in a given event, by a limitation to B. Thus, as to uses limited by way of remainder, they passed under the statute, into legal interests strictly conformable, whether vested or contingent to the ancient law of tenure. And as to executing uses, it was not an objection to their also passing into legal interests, that future and shifting dispositions were rejected by that law, for the statute adopted and legalised the use, with all its known modifications, and rendered every impression of which it was susceptible in its fiduciary state communicable to the legal seisin, except those confidences which, from their very nature, cannot be executed into possession.

Indeed, when uses are considered, as at this day they ought to be considered, simply as modifications of the legal estate—modifications which, in all their various forms, the legislature has sanctioned, requiring only, that on their original creation, a commensurate seisin should exist,—we may, if that requisite be found, safely assume that the uses, unless they transgress some general rule of law, are at all events legally effectual, without concerning ourselves with speculations which have long ceased to perplex the bench, though they may still exercise the ingenuity of the bar. This reasoning, instead of amusing the enquirer with doubtful glimpses of the *scintilla*, follows the light of acknowledged principles, which at once dispel the mist, and conduct him to a sound conclusion. We no longer need even the possibility of any dormant energy supposed to lurk in the feoffee or re-lessee, who, according to the *scintilla* doctrine,

— carries *seisin* as the flint bears fire,
Which, much enforced, shows a hasty spark,
And straight is cold again.

But assuming that the language of the statute must be literally satisfied, and that it cannot be satisfied without some implication or intendment, still the thing implied or intended, should be such as may reasonably flow from legal principles, and harmonise with the theory, at least, of the system; whereas this concert of a *scintilla* has no colour of authority, but the *dicta* in which it is supposed to be propounded, and seems to be absolutely destitute of even the semblance of analogy to any doctrine ever known to our law.

The arguments against the *scintilla* may be summed up in a few words, by observing that it is gratuitous and superfluous; that the statute law affords no hint of it, while to the common law it was utterly unknown; that if it be indeed an interest in the land, however fitful and evanescent, it must have some ascertained properties, and

confer some definite right, but which no one pretends to have yet detected; and, finally, that a doctrine which exerts no influence in practice, can have no existence in law. The weight of authority, as well as of reason, is against it, and, on the whole, we may safely subscribe to the remark of a learned writer (*But. Fear. Cont. R.* 295, n.), that "since the statute of uses this supposed possibility is in fact become an impossibility;" and rest in the conclusion of another eminent lawyer (1 *Prest. Est.* 170), "that immediately after a conveyance to uses, no *scintilla juris*, or even the most remote possibility of seisin, remains with the trustees to whom lands are conveyed to supply a seisin to uses which are, or by any possibility may, become vested, and consequently be extended into estate." We cannot, however, but admire that ingenuity which, after excruciating itself to raise a difficulty, is at last content with a solution which involves an impossibility.

SCIRE FACIAS (that you cause to know), a judicial writ, founded upon some record, and requiring the person against whom it is brought to show cause why the party bringing it should not have advantage of such record, or (as in the case of a *scire facias* to repeal letters patent,) why the record should not be annulled and vacated.

In the following instances this writ is considered as an *original proceeding*:—

(1) *Scire facias* to repeal letters patent, charters, &c.

The writ is issued out of the common law jurisdiction of the Court of Chancery, and is returnable there, and entered in the office called the Petty Bag Office. When the parties proceed to issue, the clerk of the Petty Bag delivers the record to the Queen's Bench to be tried by a jury or at bar, it is recorded in Chancery after trial and judgment and execution had thereon. If the writ is to repeal a charter, the record is transmitted to the Crown Office of the Queen's Bench, and the cause is tried at the bar of that court.

(2) When special bail become fixed by the recognizance being forfeited, one of the modes of proceeding against them is by *scire facias* on the recognizance.

(3) *Scire facias* against the pledges in replevin and the sheriff is obsolete, it being the practice to proceed upon the replevin bond against the former, and by action on the case against the latter, for taking insufficient pledges or no pledges.

In the following instances the writ is a *continuation* of an original action:—

(1) To revive a judgment after a year and a day.

When a year and a day have elapsed after judgment is signed, without execution being sued out upon it, the law presumes that the judgment has been executed, or that the plaintiff has released the execution; and, therefore, it is that a *scire facias* is required, in such a case, in order to give an opportunity to the defendant to show that the

judgment has been already executed, or other cause, if he can, why execution should not issue against him. This writ is not necessary to revive a judgment for the Queen; or if a plaintiff have been prevented from suing out execution by a writ of error or injunction, or by having a judgment with a *cesset executio* for a certain time, or by agreement. This writ is not necessary to revive a judgment against an insolvent, on the warrant of attorney given before adjudication, under the 1 & 2 Vict., c. 110, § 87.

If the judgment is under seven years old, the writ issues, as of course, without rule or motion; if above seven and under ten, a sidebar or treasury rule is obtained; if above ten, a motion for the purpose in term, or a judge's order in vacation is necessary; if above fifteen, there must be a rule to shew cause.

If execution be issued without a *scire facias*, it is only voidable upon writ of error, or it might be set aside upon application to the court, or a Judge.

(2) Upon the death of parties.

(a) If a plaintiff die after final judgment, his executors, &c., must sue out a *scire facias* against the defendant, before execution can be had, or if a defendant die after final judgment, a *scire facias* must be sued out against his executors, or against his heir and terre-tenants. If a defendant have died within a year after the judgment, a writ of execution may be sued out against his goods in the hands of his executor, without a *scire facias*, provided such writ bears date before his death; so if he die after a *fi. fa.* sued out, but before it has been executed, there is no necessity for a *scire facias*, but the writ may be executed upon the goods in the hands of the executor, &c.

(b) By 17 Car. II., c. 8, § 1, in all actions, personal, real, or mixed, the death of either party, between verdict and judgment, shall not be alleged for error, so as such judgment be entered within two terms after such verdict. The death of either party before the assizes or sittings, is not remedied by this statute; but although the judgment is entered as if the party were alive, yet it must be revived by *scire facias* before execution can issue.

(c) If either plaintiff or defendant, in actions in courts of record, happen to die after interlocutory, and before final judgment, the action shall not abate, if it be such as might ordinarily be prosecuted by or against the executor, &c., of the party dying; but the plaintiff, or his executors or administrators, shall have a *scire facias* against the defendant or his executors, &c., to show cause why damages should not be assessed and recovered by him or them; and upon *scire feci* returned, or upon *nihil* returned, and eight days elapsed from its return, and leave of the court or a Judge obtained, and default made, and no cause shown, a writ of enquiry shall be awarded, executed, and returned, and final judgment thereupon

given. In case of the defendant's death, besides this *scire facias*, another must be sued out after final judgment, in order to give the executors an opportunity of pleading the want of assets, &c.; for it would be unreasonable that the executor should be in a worse situation when the defendant dies before final judgment, than when he dies after it.

(5) Where there are two or more plaintiffs or defendants, and one dies after judgment, execution by *fi. fa.* or *ca. sa.* may be sued out, as in other cases, without any *scire facias*; and the execution must be in the joint names of all the plaintiffs or defendants, as the case may be, and must in other respects pursue the judgment; but it should be executed against the survivors only. If the plaintiff, however, wish to sue out an *elegit* against the lands of a deceased defendant, as well as against the survivor, he may have a *scire facias* against such survivor, and the heir and terre-tenants of the deceased, to have execution against the lands and goods of the former, and the lands of the latter.

(3) Upon the marriage of *feme parties*.

(a) If a *feme sole* obtain judgment, and marry before execution, a *scire facias* must be brought by husband and wife, in order to have execution of the judgment; and if, after judgment awarded on this *scire facias*, but before execution, the wife die, the husband alone may have execution upon the judgment, without even taking out administration.

(β) If judgment be recovered against a *feme sole*, and she marry before execution, a *scire facias* must be brought against the husband and wife, before the judgment can be executed; and if, after execution awarded upon this *scire facias*, but before execution, the wife die, the husband shall be liable to the execution.

(4) In cases of bankruptcy and insolvency.

If a person obtain interlocutory judgment, and before final judgment become bankrupt, his assignees may proceed to final judgment in his name, and then sue out a *scire facias* to make themselves parties, in order to have execution; and even where execution was taken out in the name of the bankrupt, without a *scire facias* being sued out by the assignees, the court refused to set aside the proceedings. The practice is the same where a plaintiff takes the benefit of the Insolvent Act.

(5) On a judgment in debt in bond.

In debt on bond or other instrument in a penal sum, conditioned for the performance of covenants, or for the doing of any other specific act, although the judgment is entered up for the entire penalty, yet execution is sued out for the amount of such damages only as the jury assess upon the breaches aforesaid suggested. The judgment, however, still remains as a security to the plaintiff for such damages as he may sustain by any further breaches; and in case of any such further breaches, the plain-

tiff shall have a *scire facias* upon the judgment against the defendant, his heirs, terre-tenants, or executors or administrators, suggesting such other breaches, and summoning him or them to show cause why execution should not be awarded upon the judgment, upon which there shall be the like proceeding as was in the action of debt upon the bond for assessing damages upon trial of issues, joined upon such breaches or enquiry thereof, upon a writ to be awarded for that purpose.

(6) On a judgment *quando*, &c., against an executor.

If on a plea of *plene administravit* in an action against an executor or administrator, or on a plea of *riens per descent* in an action against an heir, the plaintiff, instead of taking issue on the plea, take judgment of assets *quando acciderint*; in this case, if assets afterwards come to the hands of the executor or heir, the plaintiff must first sue out a *scire facias* against such executor or heir, before he can have execution. It is necessary that the writ should state that the assets came to the executor's hands after the judgment; otherwise it would be bad. If assets be found for part, the plaintiff may have judgment to recover so much immediately, and the residue of the assets in *futuro*.

In the following instances, the writ is an *interlocutory* proceeding, and in the nature of process:—

(1) *Scire facias quare executionem non*: now abolished.

(2) *Scire facias ad audiendum errores*: also abolished, except in the case of a change of parties.

The following issue after the action is terminated:—

(1) *Scire facias quare restitutionem non*, for restitution after reversal in error.

(2) *Scire facias ad rehabendum terram*, to recover lands extended under an *elegit*.

(3) *Scire facias* against the sheriff, after returning to a *fi. fa.* that he has levied the debt, to compel him to pay over the money retained in his hands.

A *scire facias* was formerly resorted to in Chancery suits, when they became abated; but this mode has been superseded in practice by the bill of revivor.

As to the proceedings on a *scire facias*. By rule of all the courts of Hilary Term, 2 Wm. IV., r. 1, § 80, a *scire facias* upon a recognizance, taken in Serjeants' Inn, or before a commissioner in the country, and recorded at Westminster, shall be brought in Middlesex only. A *sci. fa.*, founded upon a judgment, must be addressed to the sheriff of the county in which the venue was laid, the defendant being supposed to reside in that county. A *scire facias* cannot be tested in vacation; it must be made returnable in term. In personal actions, it is sufficient if there be four days exclusive between the *teste* and return; but in ejectment and replevin, the writ must be returned on

a general return day, and then there must be fifteen days between the *teste* and the return. The writ must strictly pursue the terms of the judgment, recognizance, or other record upon which it is founded. The writ, when sued out, is left at the sheriff's office, at least four clear searching days before the return of it. The defendant then has notice of the writ, by summons, if he reside in the county into which the writ is issued, or by notice, if he reside elsewhere. A four day rule for appearance is afterwards entered, and if no appearance entered, a Judge's order to sign judgment is obtained, after eight days from the return of the writ. But if an appearance notice to the plaintiff's attorney or agent be given, for no appearance is entered with the master, then the pleadings, and trial, &c., are the same as in ordinary cases. *Chit. Arch. Prac.* 815.

SCIRE FACIAS FOR THE CROWN. The summary proceeding by extent, is only resorted to when the Crown debtor is insolvent, or there is good ground for supposing that the debt may be lost by delay. In ordinary cases, where a debt or duty appears by record to be owing to the Crown, the process for the Crown is a writ of *scire facere executionem non*; but should the defendant become insolvent pending this writ, the Crown may abandon the proceeding and resort to an extent.

Scire debes cum quo contraxisti.—(You ought to know with whom you bargain.)

SCIRE FACI, the sheriff's return on a *scire facias*, that he has caused notice to be given to the party against whom the writ was issued.

Scire proprie est rem ratione et per causam cognoscere. Co. Lit. 183.—(To know properly, is to know the reason and cause of a thing.)

SCIREWYTE, the annual tax or prestation paid to the sheriff for holding the assizes or county courts. *Paroch. Antiq.* 573.

SCITE [*situs*], the sitting or standing of any place; the seat or situation of a capital messuage, or the ground whereon it stood.

Scito, quod [*ut*] *modus est*, [*si*] *conditio*, [*quia*] *causa.* Dyer, 134.—(I know that the word *ut* relates to measure, *si* to condition, *quia* to the reason.)

SCOLD [*communis inimica*], a troublesome and angry woman, who, by brawling and wrangling amongst her neighbours, breaks the public peace, increases discord, and becomes a public nuisance to the neighbourhood. See **CARRIAGEWAY**.

SCONCE, a mulct or fine.

SCOT AND LOT [*scotus*, Sax., part, and *lot*], a customary contribution laid upon all subjects according to their ability. Whoever were assessed to any contribution, though not by equal portions, were said to pay scot and lot.

SCOTAL or **SCOTALE**, an extortionate practice, by officers of the forest keeping alehouses, who compelled people to drink at their houses for fear of their displeasure. Prohibited by the Charter of the Forest, c. 7.

SCOTCH PEERS, the sixteen lords temporal, who represent, in our House of Lords, the body of the Scots nobility.

SCOTLAND, the northern portion of the island of Great Britain. It was united to England by 5 Anne, c. 8, 1st May, 1707.

SCOTTARE, tenants whose lands are subject to pay scot.

SCOTS, assessments by commissioners of sewers.

Scribere est agere. 2 Rol. Rep. 89.—(To write is to act.)

Scripta obligationes scriptis tolluntur, et nisi consensus obligatio, contrario consensu dissolvitur. Jur. Civ.—(Written obligations are superseded by writings, and an obligation of naked assent, is dissolved by naked assent.)

SCRIPTURE. All profane scoffing of the Holy Scripture, or exposing any part thereof to contempt and ridicule, is punished by fine and imprisonment.

SCRIVENER [*scrivano*, Ital., *escrivain*, Fr.], one who draws contracts; one whose business it is to place out money at interest, receiving a bonus or commission for his trouble.

When an attorney is the general depository of money of his clients and other persons who employ him, not simply in his character of attorney, but as a money agent, to invest their money on securities at his discretion, allowing him procuration fees for any sum laid out on bond or mortgage, as well as a fee or charge for preparing the deeds, such a course of dealing is substantially the business of scrivener. 1 Holl, 507; 3 Camp. 539.

SCULPTURES, copyright in, provided for by 54 Geo. III., c. 56, giving fourteen years certain, with an additional fourteen years, if the proprietor be then alive, and have not assigned his property.

SCUTAGE, a tax or contribution raised by those that held lands by knight's service, towards furnishing the king's army, at one, two, or three weeks for every knight's fee.

SCUTAGIO HABENDO, a writ that anciently lay against tenants by knight's service, to serve in the wars, or send sufficient persons, or pay a certain sum. F. N. B. 83.

SCUTE, a French gold coin of 3s. 4d.

SCUTELLA, a scuttle; anything of a flat or broad shape, like a shield.

SCUTELLA ELEEMOSYNARIA, an alms-basket.

SCUTUM ARMORUM, a shield or coat of arms.

SCYLDWIT, a mulct for any fault.

SCYRA, a fine imposed upon such as neglected to attend the *scyre* courts, which all tenants were bound to do.

SCYRE-GEMOT or **SCYREMOT,** a court held by the Saxons twice every year, by the bishop of the diocese and the earldorman, in shires that had earldormen; and by the bishop and the sheriff, where the counties were committed to the sheriff, &c., wherein both the ecclesiastical and temporal laws

were given in charge to the county. *Seld. Titles Hon.* 628.

SEA. The main or high seas are part of the realm of England, for thereon the courts of admiralty have jurisdiction, but they are not subject to the common law. The main sea begins at the low water-mark, but between the high water-mark and the low water-mark, where the sea ebbs and flows, the common law and the admiralty have, *divisum imperium*, an alternate jurisdiction; one upon the water when it is full sea; the other upon the land when it is an ebb.

SEA-GREENS, grounds overflowed by the sea in spring tides.

SEA-LAWS, laws relating to the sea, as the laws of Oleron, &c.

SEA-LETTER or **SEA-BRIEF**, a document expected to be found on board of every neutral ship. It specifies the nature and quantity of the cargo, the place whence it comes, and its destination.

SEALER [*sigillator*], an officer in Chancery who seals the writs and instruments.

SEA MARKS. See **BEACON**.

SEAMEN, *registration of.* The 7 & 8 Wm. III., c. 21, instituted a register of seamen to the number of 30,000, for a constant and regular supply of the navy; with great privileges to the registered men, and, on the other hand, heavy penalties in case of their non-appearance when called for: but this registry, being judged to be ineffectual as well as oppressive, was abolished by 9 Anne, c. 21. A registry, however, is, by 5 & 6 Wm. IV., c. 19, now directed to be kept of all merchant seamen.

SEAMEN, individuals engaged in navigating ships, barges, &c., upon the high seas. Those employed for this purpose upon rivers, lakes, or canals, are denominated watermen.

A British seaman must be a natural born subject, or be naturalised, or made a denizen, or have become a British subject by the conquest or session of some newly acquired territory; or (being a foreigner) have served on board her Majesty's ships of war, in time of war, for the space of three years. But the Queen may, by proclamation, during war, declare that foreigners who have served two years in the royal navy, during such war, shall be deemed British seamen.

Various regulations have been enacted with respect to the hiring of seamen, their conduct while on board, and the payment of their wages. These regulations differ in different countries; but in all they have been intended to obviate the dispute that might otherwise arise between the master of seamen as to the terms of the contract between them, to secure due obedience to the master's orders, and to interest the seamen in the completion of the voyage, by making their earnings depend on its successful termination.

The 5 & 6 Wm. IV., c. 19, lays down the various forms and regulations to be observed in hiring, paying, and discharging seamen; establishes an office for their registry; and prescribes the mode in which lists of crews

are to be transmitted to the registrar. It also regulates the number of apprentices to be taken on board ship; the conditions under which seamen may, in certain cases, be left in foreign parts; with a variety of other interesting particulars. As any infraction of the provisions of the act incurs, in most cases, the forfeiture of heavy penalties, it should be carefully attended to both by masters and men. After declaring that the strength, prosperity, and safety of the kingdom, principally depend on a large, constant, and ready supply of seamen, as well for carrying on the commerce as for the defence thereof, and that it is necessary by all practicable means to increase the number of such seamen, and to give them all due encouragement and protection; and that in furtherance of this end, it is expedient to amend and consolidate the laws relating to their registration and government; the statute proceeds to declare that the 2 & 3 Ann., c. 6, for the increase of seamen, &c.; the 2 Geo. II., c. 36, for the better regulation, &c., of seamen in the merchant service; the 2 Geo. III., c. 31, for perpetuating the last mentioned act, &c.; the 31 Geo. III., c. 39, for the better regulation, &c., of seamen in the coasting trade of the kingdom; the 45 Geo. III., c. 81, for amending the last mentioned act; the 37 Geo. III., c. 73, for preventing the desertion of seamen from British merchant ships in the West Indies; the 58 Geo. III., c. 38, to extend and render more effectual the regulations for the relief of seafaring men and boys, &c., subjects of the United Kingdom, in foreign parts; the 4 Geo. IV., c. 25, for regulating the number of apprentices to be taken on board British merchant vessels, &c.; and 3 & 4 Wm. IV., c. 88, for continuing the 59 Geo. III., c. 58, for facilitating the recovery of the wages of seamen in the merchant service, are hereby repealed.

The statute law does not render a verbal agreement for wages absolutely void; but imposes a penalty on the master if a written agreement be not made. When a written agreement is made, it becomes the only evidence of the contract between the parties; and a seaman cannot recover anything agreed to be given in reward for his services, which is not specified in the articles.

A seaman who is engaged to serve on board a ship, is bound to exert himself to the utmost in the service of the ship; and, therefore, a promise made by the master of a ship in distress to pay an extra sum to a seaman, as an inducement to extraordinary exertion on his part, is held to be essentially void.

Neglect of duty, disobedience of orders, habitual drunkenness, or any cause which will justify the master in discharging a seaman, during a voyage, will also deprive a seaman of his wages.

And see 7 & 8 Viet., c. 112, entitled "an act to amend and consolidate the laws relating to merchant seamen, and for keeping a register of seamen."

SEARCHER, an officer of the customs, whose business it is to examine ships outward-bound, if they have any prohibited or uncustomed goods on board, &c.

SEA-REEVE, an officer in maritime towns and places, who takes care of the maritime rights of the lord of the manor, watches the shore, and collects the wreck.

SEA-ROVERS, pirates and robbers at sea.

SEAWORTHY, a term applied to a ship, indicating that she is, in every respect, fit for her voyage.

It is provided in all charter parties that the vessels chartered shall be "light, staunch, and strong, well apparelled, furnished with an adequate number of men and mariners, tackle, provisions, &c." If the ship be insufficient in any of these particulars, the owners, though ignorant of the circumstance, will be liable for whatever damage may in consequence be done to the goods of the merchant, and if an insurance have been effected upon her, it will be void.

But whether the condition of seaworthiness be expressed in the contract or not, it is always implied. *Holt's Law of Shipping*.

SECONDARY, an officer who is second and next to the chief officer. *2 Lill. Abr.* 506. A delegate, a deputy.

SECONDARY CONVEYANCES, those which presuppose some other conveyance precedent, and only serves to confirm, alter, restrain, restore, or transfer the interest granted by the original conveyance. They are otherwise called derivative, and are—

(a) Releases.

(b) Confirmations.

(c) Surrenders.

(d) Assignments; and

(e) Defeazances.

SECONDARY USE, a use limited to take effect in derogation of a preceding estate; otherwise called a shifting use, as a conveyance to the use of A. and his heirs, with a proviso that when B. returns from India, then to the use of C. and his heirs.

SECOND DELIVERANCE, writ of, a judicial writ that lies, after a nonsuit of the plaintiff in replevin, and a *retorno habendo* of the cattle replevied, adjudged to him that distrained them, commanding the sheriff to replevy the same cattle again, upon security given by the plaintiff in the replevin for the re-delivery of them if the distress be justified. It is a second writ of replevin. *F. N. B.* 68.

SECOND DISTRESS. By 17 Car. II., c. 7, § 4, in all cases where the value of the cattle distrained shall not be found to be of the full value of the arrears distrained for, the party to whom such arrears are due, his executors or administrators, may distrain again for the said arrears; but a second distress cannot, it seems, be at all justified, where there is enough which might have been taken upon the first, if the distrainer had then thought proper; for a man who has an entire duty, as rent, for example, shall not split the entire sum, and distrain

for one part of it for one time, and for the other part of it at another time, and so *toties quoties* for several times; for that is great oppression.

SECOND SURCHARGE, writ of. If after admeasurement of common, upon a writ of admeasurement of pasture, the same defendant surcharges the common again, the plaintiff may have this writ of second surcharge *de secundâ superoneratione*, which is given by the Stat. West. 2, 13 Edw. I., c. 8.

SECRETARY, one intrusted with the management of business; one who writes for another.

SECRETARIES OF STATE, officers attending the Sovereign, for the receipt and dispatch of letters, grants, petitions, and many of the most important affairs of the kingdom, both foreign and domestic.

There are three principal secretaries, one for the home department, another for foreign affairs, and a third for the colonies. These have under their management the most considerable affairs of the nation, and are obliged to a constant attendance on the Sovereign; they receive and dispatch whatever comes to their hands, be it for the Crown, the church, the army, private grants, pardons, dispensations, &c., as likewise petitions to the Crown, which, when read, are returned to the secretaries for answer; all which they dispatch according to the Sovereign's command and direction. Each of them has two under-secretaries and one or more chief clerks, besides a number of other clerks and officers, wholly depending upon them. The secretaries of state are allowed power to commit persons for treason and other offences against the state, in order to bring them to their trial. Some have said that this power is incident to their office, and others that they derive it in virtue of their being named in the commissions of the peace for every county in England and Wales. They have the custody of the signet, and the direction of the signet office and the paper office.

Ireland is under the direction of a chief secretary to the lord lieutenant, who has under him a resident under-secretary. *Encyc. Lond.*

SECTA [from *sequendo*], the witnesses or followers of a plaintiff.

SECTA AD CURIAM, a writ that lay against him who refused to perform his suit either to the county court or the court baron.

SECTA AD JUSTICIAM FACIENDAM, a service which a man is bound to perform by his fee. *Bract*.

SECTA AD MOLENDINUM, a writ that lay where a man, by usage, had ground his corn at the mill of a certain person, and afterwards went to another mill with his corn, thereby withdrawing his suit to the former. Abolished by 3 & 4 Wm. IV., c. 27, § 36.

SECTA CURIÆ, suit and service done by tenants at the lord's court.

Secta est pugna civilis: sicut actores, armantur actionibus, est quasi gladiis accinguntur, illi rei muniuntur exceptionibus et defenduntur

quasi clypeis. Hob. 20.—(A suit is a civil warfare : for as the plaintiffs are armed with actions, it is as though they were girded with swords : so the defendants are fortified with exceptions, and are defended, as it were, by shields.)

SECTA FACIENDA PER ILLAM QUÆ HABET ENICIAM PARTEM, a writ to compel the heir, who has the elder's part of the co-heirs, to perform suit and service for all the coparceners.

SECTA REGALIS, a suit or service by which all persons were bound twice in a year to attend the sheriff's tourn.

Secta quæ scripto nititur à scripto variari non debet. Jenk. Cent. 65.—(The *secta*, which is displayed in the writing, ought not to vary from the writing.)

SECTA UNICA TANTUM FACIENDA PRO PLURIBUS HÆREDITATIBUS, a writ for an heir who was distrained by the lord to do more suits than one, that he should be allowed to do one suit only in respect of the land of divers heirs descended to him.

SECTIS NON FACIENDIS, a writ for a woman, who, for her dower, ought not to perform suit of court.

SECULAR, not spiritual ; relating to affairs of the present world.

SECULAR CLERGY, parochial clergy who perform their ministry in the world.

SECUNDA SUPERONERATIONE PASTURÆ. See **SECOND SURCHARGE**, writ of.

SECURITATEM INVENIENDI, &c., an ancient writ, lying for the Sovereign, against any of his subjects, to stay them from going out of the kingdom to foreign parts ; the ground whereof is, that every man is bound to serve and defend the commonwealth as the Crown shall think fit. *F. N. B.* 115.

SECURITATIS PACIS, a writ that lay for one who is threatened with death or bodily harm by another, against him who so threatened. *Reg. Orig.* 88.

SECURITY FOR COSTS. At common law, if a plaintiff, whether suing in an individual or a representative capacity, and whether for his own benefit or that of another, reside abroad, or even in Ireland or Scotland, the court or a Judge, upon application, will stay the proceedings until he give security for costs, and this although the defendant have no defence on the merits. If a lessor of the plaintiff in ejectment be an infant, proceedings will be stayed until security be given, or his guardian guarantees the costs, or some real and responsible person be named as plaintiff ; and so, if the resulting action for mesne profits be brought in the name of the nominal plaintiff. A defendant will not be compelled to give this security, unless, perhaps, in replevin, in which action he is deemed a plaintiff. If a plaintiff be convicted of felony, and under sentence of transportation, proceedings will be stayed until security be given. Where another person is proceeding with an action in the name of the party on the record, and that party is insolvent, the court will, by staying proceed-

ings, compel him for whose benefit the action is proceeding, to come in and give security for costs. But if one of several plaintiffs reside in this country, security will not generally be given. If the plaintiff, however, be out of the kingdom, on a mere temporary absence, especially if a seaman or foreigner, serving on board an English vessel, or on board a foreign vessel, constantly sailing to and from this country, he will not be compelled to give this security, unless where the absence commenced before action brought ; but the absence must be temporary. And it is no ground to obtain this security that the plaintiff is about to leave the country, or is a foreigner, unless he reside abroad. It will not be granted when the absence is not voluntary, as in the case of naval and military officers, and other persons engaged abroad in the public service.

If, after the security, one or both of the sureties become bankrupt or insolvent, that is no ground to go for a fresh security.

The defendant should apply to the plaintiff's attorney or agent for security, and, on refusal, give two days' notice of application, which must be made before issue joined. The amount and sufficiency of the security is decided by one of the masters. The court will not order the bond to be cancelled on an affidavit that the plaintiff has returned to England, and is resident there. *Chit. Arch. Prac.* 1012.

In *Chancery*, security for costs can be obtained under similar circumstances. If it appear by the bill that the plaintiff is abroad, the application is either by motion or petition, as of course ; but, otherwise, it must be made upon notice of motion, supported by an affidavit of the facts. The application should be made as soon as the defendant is aware of the plaintiff's absence ; for should he take another step in the suit, after knowing it, he waives all right to security. A bond is given to a clerk of records and writs in the penal sum of 100*l.*

SECURITY FOR GOOD BEHAVIOUR OR ABEARANCE. Justices of the peace are empowered by 34 Edw. III., c. 1, to bind over to the good behaviour towards the Sovereign and his people, all them that be not of good fame, wherever they be found ; to the intent that the people be not troubled or endangered, nor the peace diminished, nor merchants and others, passing by the highways of the realm, be disturbed, nor put in the peril which may happen by such offenders. Justices do not act under this statute, unless a complaint, requiring such security to be taken, has been made, or a conviction of some offence of a dangerous kind has taken place, and the circumstances are such as to render a repetition of it by the same offender probable.

SECURITY FOR KEEPING THE PEACE. Becoming bound with one or more sureties in a recognizance or obligation to the Crown, and taken in some court or by some judicial officer, whereby the parties acknowledge

themselves to be indebted to the Crown in the sum required, with condition to be void and of none effect, if the party shall appear in court on a certain day, and in the meantime shall keep the peace, either generally, towards the sovereign and all her liege people; or, particularly also, with regard to the person who craves the security; or, on condition, so to keep the peace for a certain period, not dependent on any appearance in court. If the condition of the recognizance be broken, the recognizance becomes forfeited or absolute, and the party and his sureties become the Crown's debtors for the several sums in which they are respectively bound. 4 *Step. Com.* 311.

Securius expediuntur negotia commissa pluribus: et plus vident oculi quam oculus. 4 *Co.* 46.
—(Business entrusted to many speeds best: and many eyes see more than one eye.)

SECUS, otherwise.

SE DEFENDENDO, *homicide*, excusable slaughter, in defence of one's own life, when attacked and put in jeopardy.

SEDERUNT, *acts of*, ordinances of the Court of Session in Scotland, under authority of the Statute 1540, c. 93, by which authority is given to the court to make such regulations as may be necessary for the ordering of processes and the expediting of justice.

SEDITION, an offence against the Crown and government, not capital, and not amounting to treason. All contempts against the Sovereign and the government, and riotous assemblies for political purposes, may be ranked under the head of sedition.

In the Scotch law, an attempt made by meeting, or by speeches or publications, to disturb the tranquillity of the state, it is distinguished from leasing-making, which has in view to diminish or affect the sovereign's private character.

SEDUCING TO DESERT OR DESERTION, offences against the government, provided against by the Annual Mutiny Acts. See 1 *G. I.*, c. 47; 37 *G. III.*, c. 70; and 1 *V.*, c. 91.

SEDUCTION, the corruption of women.

An action of seduction is frequently adopted by a parent for the purpose of obtaining a compensation, in damages, for debauching his daughter, and getting her with child, and the expenses attending the lying-in; *per quod servitium amisit*. A master also, not standing in the relation of a parent, may maintain this action for debauching his servant. In ascertaining the amount of damages in this action, a jury should regard not merely the injury sustained by the loss of service, but also the wounded feeling of the parent or party standing *in loco parentis*. Our criminal code has not provided any punishment for this offence.

SEIGNIOR, a lord of a fee or manor.

SEIGNIOR IN GROSS, a lord without a manor.

SEIGNIORAGE, a royalty or prerogative of the Crown, whereby an allowance of gold and silver, brought in the mass to be exchanged for coin, is claimed.

SEIGNIORY, a manor or lordship.

Seisina facit stipitem. Wright's Ten. 185.—
(The seisin makes the heir.)

SEISIN, possession.

There is a seisin in deed, as when an actual possession is taken; or in law, where lands descend, and one has not actually entered upon them.

SEISIN, *livery of*, delivery of possession.

SEISINA HABENDA, &c., a writ for delivery of seisin to the lord, of lands and tenements, after the King, in right of his prerogative, has had the year-day, and waste, on a felony committed, &c. *Reg. Orig.* 165.

SEISING OF HERIOTS, taking the best beast, &c., where an heriot is due, on the death of the tenant. It is a species of self-remedy, not much unlike that of taking goods or cattle in distress; only, in the latter case, they are seised as a pledge, in the former, as the property of the person for whom seised.

SEISIN-OX, a perquisite formerly due to the sheriff of Scotland when he gave infeftment to an heir holding Crown lands. It is now converted into a money payment, proportioned to the value of the estate.

SEIZURE OF GOODS FOR OFFENCES, no goods of a felon or other offender can be taken to the use of the Crown, before forfeited. There are two kinds of seizure, (1) *verbal*, to make an inventory, and charge the town or place where the owner is indicted for the offence; and (2) *actual*, which is taking them away after conviction. 3 *Inst.* 103.

SEL denotes the bigness of a thing to which it is added, as *Selwood*, a big wood.

SELDA [*selde*, Sax., a seat], a shop, shed, or stall in a market; a wood of willows or willows; also, a salt-pit. *Co. Lit.* 4.

SELECT VESTRY ACT, 59 *Geo. III.*, c. 12.

SELF-DEFENCE. Both the life and limbs of a man are of such high value, in the estimation of the law of England, that it pardons even homicide, if committed *se defendendo*, or in order to preserve them. See *DEFENCE*, *HOMICIDE*.

SELF-MURDER. See *FELONY DE SE*.

SELION OF LAND, a ridge of ground rising between two furrows, containing no certain quantity, but sometimes more and sometimes less. *Termes de Ley*.

SELLING PUBLIC OFFICES, an offence against the government.

It is provided, by 5 & 6 *Edw. VI.*, c. 16, confirmed and extended by 49 *Geo. III.*, c. 106, that persons buying or selling, or receiving or paying money or reward for any office in the gift of the Crown (with certain exceptions), and persons receiving or paying money for, or soliciting or obtaining any such office, or making any negotiation or pretended negotiation relating thereto, and persons opening or advertising houses for transacting business relating to the sale of any such office, shall respectively be deemed guilty of a misdemeanour. 6 *Geo. IV.*, cc. 82, 83, and 106.

Semel malus semper presumitur esse malus in

eodem genere. Cro. Car. 317.—(Whatever is once bad, is always presumed to be bad in the same degree.)

SEMI-PLENA PROBATIO, a semi-proof; the testimony of one person, upon which the civilians will not allow any sentence to be founded.

Semper ita fiat relatio ut valeat dispositio. 6 Co. 76.—(Let the reference always be so made, that the disposition may avail.)

Semper presumitur pro legitimatione puerorum; et filiation non potest probari. Co. Lit. 126.—(It is always to be presumed that children are legitimate: and filiation cannot be proved.)

Semper presumitur pro sententiâ. 3 Buls. 42.—(Presumption is always for the sentence.)

SENAGE, money paid for synodals.

SENATOR, a member of Parliament.

The Judges of the Court of Session in Scotland are entitled Senators of the College of Justice. *Act. 1540, c. 93.*

Senatores sunt partes corporis regis. 4 Inst. 53.—(The senators are part of the king's body.)

SENATUS CONSULTA, public acts, among the Romans, which regarded the whole community.

SENATUS DECRETA, private acts, which concern particular persons or private concerns.

SENE SCHAL [*sein*, Germ., a house, and *schale*, an office]. A steward; also, one who has the dispensing of justice. *Kitch. 83.*

SENE SCHALLO ET MARESHALLO QUOD NON TENEAT PLACITA DE LIBERO TENEMENTO, a writ addressed to the Steward and Marshal of England, inhibiting them to take cognizance of an action in their court that concerns freehold. *Reg. Orig. 185.*

SENEVCIA, widowhood.

SENEY-DAYS, play-days; or times of pleasure and diversion.

Sensus verborum est anima legis. 5 Co. 2.—(The meaning of the words is the spirit of the law.)

Sensus verborum ex causa dicendi accipiendus est: et sermones semper accipiendi sunt secundum subjectam materiam. 4 Co. 14.—(The sense of words is to be taken according as the words are used: and discourses are always to be interpreted according to the subject.)

Sensus verborum est duplex, mitis et asper et verba semper accipienda sunt in mitiore sensu. 4 Co. 13.—(The meaning of words is two-fold, soft and rough: and words are to be received in their softer sense.)

SENTENCE OF A COURT, a definitive judgment pronounced in a cause or criminal proceeding.

Sententia contra matrimonium nunquam transit in rem judicatam. 7 Co. 48.—(A sentence against marriage never passes in a matter judged.)

Sententia facit jus, et legis interpretatio legis vim obtinet. *Elleam. Postn. 55.*—(The sentence gives the right, and the interpretation of the law has the force of law.)

Sententia facit jus, et res judicata pro veritate accipitur. *Elleam. Postn. 55.*—(Sentence

creates the right, and what is adjudicated is taken for granted.)

Sententia interlocutoria revocari potest, definitiva non potest. Bacon.—(An interlocutory sentence may be recalled, but not a final.)

Sententia non fertur de rebus non liquidis: et oportet quod certa res deducatur in judicium. Jenk. Cent. 7.—(Sentence is not given on things not liquidated: and something certain ought to be brought to judgment.)

SEPARATE ESTATE. Property may be given to the separate use of a married woman, who will be considered, in a court of equity, to all intents and purposes, as a *feme sole* in respect thereof.

If the precaution have not been taken of vesting in trustees the property given to the separate use of a married woman, her husband, in whom such property vests by operation of law, will, by the court, be considered a trustee for her.

A limitation to the separate use of a woman unmarried at the time of gift taking effect, is valid in the event of her subsequent marriage.

A married woman may be restrained from alienating property settled to her separate use, although a prohibition against alienation is invalid if annexed to a gift to a man.

If property be given to the separate use of a married woman, and she is not restrained from alienation, she may dispose of it during coverture, either by gift in her lifetime or by will at her death, the same as if she were a *feme sole*.

If property be given to the separate use of a married woman, who is restrained from alienating it, the restriction will cease as soon as she becomes discovert by the death of her husband.

If property be given to the separate use of a woman, with restriction against alienation, and she be unmarried at the time of the gift taking place, the restriction is inoperative as long as she continues sole, but if she marry without having exercised her power of alienation, the restriction is binding on her during coverture.

If property be settled to the separate use of a married woman, with a restriction against alienation, although the restriction cease as soon as she is discovert, yet, if she marries again without having exercised her power of alienation while sole, the restriction revives and continues in force during the second marriage. 1 *Haye's Conv. 539.*

SEPARATE MAINTENANCE. Although the law looks with great disfavor on any agreement, the object of which is to relieve from the duties and obligations arising from the conjugal relation, yet, where the husband and wife have actually come to a resolution to live separately, the courts, both of law and equity, have in many cases recognized the validity of agreements made for the purpose of carrying this resolution into effect.

This is usually done by the husband's covenanting with trustees appointed on behalf of the wife, that he will provide cer-

tain sums for her separate maintenance, the trustees covenanting in return to indemnify the husband against the debts of the wife, and that she shall release all claims of jointure and dower. The deed should contain a clause, in which each party covenants not to molest or interfere with the other, and not to sue for the restitution of conjugal rights. 2 *Step. Com.* 309.

SEPARATION, the living asunder of man and wife.

SEPARATION OF BENEFICES, &c. See 1 & 2 Vict., c. 106.

SEPARATISTS, seceders from the church. They, like quakers, solemnly affirm, instead of taking the usual oath, before they give evidence. 3 & 4 Wm. IV., c. 49, § 82; 1 & 2 Vict., cc. 5, 15; 6 & 7 Vict., c. 85, § 2.

SEPARIA, several or severed and divided from other ground. *Paroch. Antiq.* 336.

SEPTENNIAL ELECTIONS. Our Parliament must expire or die a natural death at the end of every seventh year, if not sooner dissolved by the royal prerogative. 1 *Geo. I.*, st. 2, c. 38.

SEPTUAGESIMA, the third Sunday before *quadragesima* Sunday in Lent, being about the 70th day before Easter.

SEPTUM, an enclosure; any place paled in.

SEPULTURA, an offering to the priest, for the burial of a dead body.

SEQUATUR SUB SUO PERICULO, a writ that lay where a summons *ad warrantizand* is awarded, and the sheriff returns that the party has nothing whereby he may be summoned; then issue an *alias* and a *pluries*, and if he come not in on the *pluries*, this writ shall issue. *O. N. B.* 163.

SEQUELA CAUSÆ, the process and depending issue of a cause for trial.

SEQUELA MOLENDINA. See *SECTA AD MOLENDINUM*.

SEQUELA CURIÆ, suit of court.

SEQUELA VILLANORUM, the family retinue and appurtenances to the goods and chattels of villeins, which were at the absolute disposal of the lord. *Paroch. Antiq.* 216.

SEQUELS, small allowances of meal, or manufactured victual made to the servants at a mill where corn was ground, by tenure in Scotland, for their work. See *THIRLAGE*.

SEQUENDUM ET PROSEQUENDUM, to follow and prosecute a cause.

SEQUESTER, to renounce; to set aside from the use of the owners to that of others.

SEQUESTRARI FACIAS, *writ of*, a process commanding the bishop to enter into the rectory and parish church, and to take and sequester the same, and hold them until, of the rents, tithes, and profits thereof, and of the other ecclesiastical goods of the defendant, he have levied the plaintiff's debt. It is in the nature of a *levari facias*. *Chit. Arch. Prac.* 916.

SEQUESTRATION, the separating or setting aside of a thing in controversy, from the possession of both the parties that contend for it: it is twofold, *voluntary*, done by consent of all parties, and *necessary*, when a Judge orders it.

Sequamur vestigia patrum nostrorum. Jenk. Cent.—(Let us follow the footsteps of our fathers.)

SEQUESTRATION IN CHANCERY, a prerogative process addressed to certain commissioners empowering them to enter upon a defendant's real estates, and sequester the rents thereof, as also his goods, chattels, and personal estate, and keep the same until the defendant shall clear his contempt. It has no return, and is granted as of course upon a return of *non est inventus* by the serjeant-at-arms, or by a sheriff on an attachment. *Orders 8th May, 1845, clauses* 84, 88.

As against peers, members of Parliament, and corporations, the sequestration is *ais* only in the first instance.

The sequestrators are officers of the court, and as such are amenable thereto, and are to act from time to time in the execution of their office as the court shall direct; they are to account for what comes to their hands, and are to bring the money into court as ordered, to be put out at interest or otherwise, as shall be found necessary; this money is not usually paid to the plaintiff, but remains in court until the defendant has appeared or answered and cleared his contempt, and then whatever has been seized shall be accounted for and paid over to him; the court, however, having the whole under their power may do therein as they please, and as shall be most agreeable to the justice and equity of the case.

SEQUESTRATION OF A BENEFICE. See *SEQUESTRARI FACIAS*.

SEQUESTRO HABENDO, a judicial writ for the discharging a sequestration of the profits of a church benefice, granted by the bishop at the Sovereign's command, thereby to compel the parson to appear at the suit of another; upon his appearance, the parson may have this writ for the release of the sequestration. *Reg. Judic.* 36.

Sequi debet potentia justitiam non precedere. 2 *Inst.* 454.—(Power should follow justice, not precede it.)

SERJEANT or SERJEANTS [*serviens*, Lat.], used in several senses:—

(1) *Serjeants at law* or *of the coif* (*servientes ad legem*), otherwise called serjeants counter, the highest degree in the common law, as doctors in the civil law; but, according to Spelman, a doctor of law is superior to a serjeant, for the very name of a doctor is ministerial, but that of a serjeant is only ministerial. Serjeants at law are made by the Queen's writ, addressed unto such as are called, commanding them to take upon them that degree by a certain day. *Fortescue*, c. 50; 3 *Cro.* 1; *Dyer*, 72; 2 *Inst.* 213. See *PRECEDENCE*.

The monopoly enjoyed by the serjeants in the Court of Common Pleas, during term time, has been recently abolished, and the court thrown open to the bar generally. 9 & 10 *Vict.*, c. 54.

(2) *Serjeants at arms*, officers attending the Sovereign's person to arrest individuals

of distinction offending, and give attendance on the Lord High Steward of England, sitting in judgment on any traitor, &c. Two of these, by the royal permission, attend on the two Houses of Parliament; the office of him in the House of Commons is the keeping of the doors, and the execution of such commands, touching the apprehension and taking into custody of any offender, as that house shall enjoin him. Another of them attends in the Court of Chancery, and one on the Lord Treasurer of England; also, one upon the Lord Mayor of London on extraordinary solemnities, &c. They are in the old books called *virgatories*, because they carried silver rods gilded, as they now do maces, before the Sovereign. *Fleta*, l. 2, c. 38.

(3) *Serjeants of the household* are officers who execute several functions within the royal household. 33 Hen. VIII., c. 12.

(3) *The common serjeant*, a judicial officer in the city of London, who attends the Lord Mayor and Court of Aldermen on court days, and is in council with them on all occasions within or without the precincts or liberties of the city.

(5) *Inferior serjeants*, such as serjeants of the mace in corporations, officers of the county; and there are serjeants of manors, of the police, &c.

Serjeantia idem est quod servitium. Co. Lit. 105.—(Serjeantry is the same as service.)

SERJEANTY, or SERGEANTY, or SEAR-GEANTY, a service anciently due to the Crown for lands held of it, and which could not be due to any other lord. It was divided into *grand* and *petit*. See TENURE.

Sermo index animi. 5 Co. 118.—(Speech is an index of the mind.)

Sermo relatus ad personam intelligi debet de conditione personæ. 4 Co. 16.—(A speech relating to the person is to be understood as relating to his condition.)

Sermones semper accipiendi sunt secundum subjectam materiam, et conditionem personarum. 4 Co. 14.—(Discourses are to be understood according to their subject, and the condition of the persons.)

SERVAGE, when a tenant, besides payment of a certain rent, finds one or more workmen for his lord's service. King John brought the Crown of England in servage to the see of Rome. 2 Inst. 174; 1 Ric. II., c. 6.

SERVANTS. See MASTER AND SERVANT.

SERVI, bondmen or servile tenants.

They were of four sorts: 1. Such as sold themselves for a livelihood. 2. Debtors sold for being incapable of paying their debts. 3. Captives in war, retained and employed as perfect slaves. 4. *Nativi*, born servants, as such, solely belonged to the lord. There were also said to be *servi testamentales*, those which were afterwards called covenant servants. *Cowell*.

SERVICE [*servitium*], that duty which a tenant, by reason of his estate, owes to his lord. There are many divisions of this duty

in our ancient law books, as into personal and real, which is either *urbane* or *rustic*, free and base, continual or annual, casual and accidental, intrinsic and extrinsic, certain and uncertain, &c. See TENURE. Also, executing a writ or notice, by giving a copy of it to the party whom it immediately concerns.

SERVICE OF AN HEIR. By the law of Scotland, before an heir can regularly acquire a right to the ancestor's estate, he ought to be served heir, which is one of the old forms of the law of Scotland, proceeding upon a writ, and including in it the decision of a jury, fixing the right and character of the heir to the estate of the ancestor.

SERVICE SECULAR, worldly service, contrasted to spiritual or ecclesiastical.

SERVIENTIBUS, certain writs touching servants and their masters violating the statutes made against these abuses. *Reg. Orig.* 189.

SERVIENT TENEMENT, an estate in respect of which a service owing, as the *dominant tenement* is that to which the service is due.

Servile est expilationis crimen; sola innocentia libera. 2 Inst. 573.—(The crime of theft is slavish; innocence alone is free.)

SERVING FOREIGN STATES, an offence against the government, as being a breach of one's allegiance. 3 Jac. I., c. 4, § 18; 59 Geo. III., c. 69.

Servitia personalia sequuntur personam. 2 Inst. 374.—(Personal services follow the person.)

SERVITIUM FEODALE ET PRÆDIALE, a personal service, but only by reason of the lands which were held in fee. *Bract.* l. 2, c. 16.

SERVITIUM FORINSECUM, a service which did not belong to the chief lord, but to the king. *Mon. Ang.* ii. 48.

Servitium, in lege Angliæ, regulariter accipitur pro servitio quod per tenentes dominis suis debetur ratione feodi sui. Co. Lit. 65.—(Service, by the law of England, means the service which is due from the tenants to the lords, by reason of their fees.)

SERVITIUM INTRINSECUM, that service which was due to the chief lord alone from his tenants within his manor. *Fleta*, l. 3.

SERVITIUM LIBERUM, a service to be done by feudatory tenants, who were called *liberi homines*, and distinguished from vassals, as was their service; for they were not bound to any of the base services of ploughing the lord's land, &c., but were to find a man and horse, or go with the lord into the army, or to attend his court, &c. It was called also *servitium liberum armorum*.

SERVITIUM REGALE, royal service, or the prerogatives that, within a royal manor, belonged to the lord of it; which were generally reckoned to be the following—viz., power of judicature in matters of property, and of life and death in felonies and murders; right to waifs and estrays; minting of money; assize of bread and beer, and weights and measures. *Paroch. Antiq.* 60.

SERVI TESTIMENTALES, covenant servants.

SERVITIIS ACQUIETANDIS, a judicial writ for a man distrained for services to one, when he owes and performs them to another, for the acquittal of such services. *Reg. Judic.* 27.

Servitus est constitutio jure gentium, qua quis domino alieno contra naturam subjicitur.

Co. Lit. 116.—(Slavery is an institution by the law of nations, by which a man is subjected to a foreign master, contrary to nature.)

SERVITOR, a serving man; particularly applied to scholars at Oxford, who are, upon the foundation, similar to a sizer at Cambridge.

SERVITORS OF BILLS, servants or messengers of the marshal of the Queen's Bench, who were sent abroad with writs, &c., to summon persons to that court. 2 Hen. IV., c. 23.

SERVITUDES, burdens affecting property and rights in Scotland; nearly resembling easements in England.

SESS or ASSESS, rate; tax.

SESSION, court of, IN SCOTLAND, the supreme civil court of Scotland, instituted A. D. 1532, and formerly consisting of fifteen Judges—that number being reduced, in 1830, by 11 Geo. IV. and 1 Wm. IV., c. 69, § 20, to thirteen; viz., the Lord President, the Lord Justice-Clerk, and eleven ordinary lords. This court is required, by 48 Geo. III., c. 151, to sit in two divisions: the Lord President, with three ordinary lords, form the first division; and the Lord Justice-Clerk, and three other ordinary lords, form the second division. There are five permanent Lords Ordinary, not attached exclusively to either division, but equally to both, the last appointed of whom officiates in the bills, i. e., petitions to the court during session, and performs the other duties of junior Lord Ordinary; the four other lords performing, in weekly rotation, the duties of ordinary in the Outer House. The chambers of the Parliament House, in which the first and second divisions of the Court of Session hold their sittings, are called the Inner House: that in which the Lords Ordinary sit, as single Judges, to hear motions and causes, is called the Outer House, which is the great hall of the Parliament House. The nomination and appointment of the Judges is in the Crown. No one can be appointed who has not served as an advocate or principal clerk of session for five years, or a writer to the signet for ten years. See **JUSTICIARY, High Court of**.

SESSION, great, OF WALES, a court which was abolished by 1 Wm. IV., c. 70; the proceedings now issue out of the courts at Westminster, and two of the Judges of the superior courts hold the circuits in Wales and Cheshire, as in other English counties.

SESSION OF PARLIAMENT, the sittings of the Houses of Lords and Commons, which is continued, day by day, by adjournment, until it is prorogued or dissolved.

SESSIONS, a sitting of justices in court upon their commission, as the sessions of oyer and terminer, gaol delivery, &c.

SESSIONS OF THE PEACE, sittings of justices of the peace for the execution of those powers which are confided to them by their commission, or by charter, and by numerous statutes. They are of four descriptions:—

I. Petty sessions.

Every meeting of two or more justices in the same place, for the execution of some power vested in them by law, whether had on their own mere motion, or on the requisition of any party entitled to require their attendance in discharge of some duty, is a petty or petit session. The occasions for holding petty sessions are very numerous; among the most important of which is the bailing persons accused of felony, which may be done after a full hearing of evidence on both sides, where the presumption of guilt shall either be weak in itself, or weakened by the proofs adduced on behalf of the prisoner.

As to the right of the public to attend petty sessions, it is settled, that in cases of *preliminary* inquiry, as where magistrates sit to determine whether they shall bail or commit a party accused of felony or misdemeanor, it is settled, that no person, as one of the public, can claim, as of right, to be present. The 6 & 7 Wm. IV., c. 114, allowing counsel to address the jury for prisoners at their trial, does not alter the law in this respect. But when magistrates sit to *adjudicate* as upon a proceeding for a penalty, the place in which they sit is an open court of justice, to which all persons have a right of access, and from which no one may be lawfully removed, so long as he conducts himself with propriety.

II. Special sessions.

A special session is a sitting of two or more justices, holden, not of their own mere motion and private agreement, but on a particular occasion for the execution of some given branch of their authority, after reasonable notice to all the other magistrates of the hundred or other division of the county, city, &c., for which it is convened and holden; which notice has been served personally or by post, subject to 7 & 8 Vict., c. 33.

There are several special sessions required by law to be holden at particular periods; as for appointing overseers of the poor, by 43 Eliz., c. 2, and 54 Geo. III., c. 91, on the 25th March, or within fourteen days after; and for licensing ale-houses and victualling-houses, to sell exciseable liquors by retail, to be drunk or consumed on the premises, on some day between 20th August and 14th September inclusive, except in Surrey and Middlesex, where the meetings must be held within the first ten days of March; and for appointing the days of holding not less than eight, nor more than twelve, special sessions in the year, for executing the purposes of the Highway Act, which, by 5 & 6 Wm. IV., c. 50, § 45, are to be so appointed at a special ses-

sions, to be held within fourteen days after every 20th March. Also, justices acting in every petty sessions' division shall, four times at least in every year, hold a special sessions to hear appeals against poor rates, giving at least twenty-eight days' notice before the holding of the same, in pursuance of 6 & 7 Wm. IV., c. 96, § 6, and by 5 & 6 Vict., c. 109, for increasing security of persons and property, the justices of peace of every county in England shall, on some day after 24th March and before 9th April, in each year, hold a special petty session of the peace in their several divisions, for the appointment of parochial constables; of which session due notice shall be given to every justice usually acting in that division.

III. General sessions.

A general sessions of the peace is a court of record holden before two or more justices, whereof one is of the *quorum*, for execution of the general authority given to justices by the commission of the peace and certain acts of Parliament. The only description of general sessions which is now usually holden, is the court of General Quarter Sessions; but in the county of Middlesex, besides the four quarter sessions, four general sessions are held in the intervals, and original intermediate sessions occasionally take place. A general session may be called by any two justices within the jurisdiction, one being of the *quorum*, or by the *custos rotulorum*, and one justice; but not by one justice, or by the *custos rotulorum* alone. The presence of two justices is necessary to its being held or even adjourned, so as to hold it legally at another time.

IV. General quarter sessions.

They are that species of general sessions which is held under authority of the commission of the peace by two or more justices (one being of the *quorum*), at some place within the county, fixed by their precept, once in every quarter of the year, as directed by various statutes. It is a court of oyer and terminer, and a court of record, and not a court of inferior jurisdiction. By 11 Geo. IV. and 1 Wm. IV., c. 70, § 25, it was enacted, "that in the year of our Lord, 1831, and afterwards, the justices of the peace in every county, riding, or division, for which general quarter sessions of the peace by law ought to be held, shall hold their general quarter sessions of the peace in the first week after the 11th day of October; in the first week after the 28th day of December; in the first week after the 31st day of March; and in the first week after the 24th day of June; and that all acts, matters, and things done, performed, and transacted at the times appointed by this act for the holding of the general quarter sessions of the peace, shall be as valid and binding to all intents and purposes as if the same had been done, performed, and transacted at general quarter sessions of the peace, holden at the times by law limited for the holding thereof before the passing of this act." This statute is merely directory, for

quarter sessions of the peace would be good, though held at other times than those specified. But because in some counties of England and Wales, the time usually fixed for holding the spring assizes interferes with the due holding of the sessions, appointed to be holden in the first week after the 31st March, the 4 & 5 Wm. IV., c. 47, enacts that in every county, riding, or division, it shall be lawful for the justices assembled in their general quarter sessions, in the week next after the 28th day of December, in every year, to name, if they shall see occasion so to do, two justices of the peace, who shall be empowered, as soon as may be after the time for holding the spring assizes shall be appointed, to fix the day for holding the next general quarter sessions of the peace for such county, &c., so as such time may not be earlier than the 7th March, nor later than 22nd April; and to give notice of the day so fixed by advertisement in such newspaper as shall be directed by the justices so assembled; and in every such case the general quarter sessions, held on the day so fixed and notified, shall be valid, and it shall not be necessary to hold any sessions of the peace for such county, &c., in the next week after the 31st day of March, anything in 11 Geo. IV. and 1 Wm. IV., c. 70, to the contrary notwithstanding. Provided, that in every county, where no other day shall be fixed under this act, the justices shall hold their general quarter sessions of the peace in the week next after the 31st March, as required by 11 Geo. IV. and 1 Wm. IV., c. 70.

The time for holding quarter sessions in boroughs is provided for by 5 & 6 Wm. IV., c. 76.

There are held in London and Middlesex at least eight sessions in every year, four of them held as quarter sessions, at periods as nearly corresponding to the quarterly periods directed by the statutes as may be, though not exactly, and the other four as original general sessions in the intermediate spaces of time. Both have the same jurisdiction for trial of indictments, except in cases where, by statute, the quarter sessions have the power given in terms exclusively to them. Besides which the justices in Middlesex act at their sessions in a commission of *oyer and terminer*, which exists in that county, and gives them additional powers, subject, however, to 4 & 5 Wm. IV., c. 36, § 17, the Central Criminal Court Act, and 5 & 6 Vict., c. 38.

The sessions for Middlesex are held by adjournment within Westminster, with like jurisdiction as the Westminster sessions had, which have ceased to be holden. 7 & 8 Vict., c. 71, § 11.

The jurisdiction of the court of quarter sessions is criminal and civil, and arises from the commission of the peace itself, as settled under 18 Edw. III., c. 2, and 34 Edw. III., c. 1.

By 5 & 6 Vict., c. 38, intituled, "an act to define the jurisdiction of justices in general

and quarter sessions of the peace," reciting that it is expedient that the powers of justices in general and quarter sessions of the peace, with respect to the trial of offences, be better defined, it is enacted, that after the passing of this act, neither the justices of the peace acting in and for any county, riding, division, or liberty, nor the recorder of any borough, shall at any sessions of the peace, or at any adjournment thereof, try any person or persons for any

Treason, murder, or capital felony, or for any

Felony which, when committed by a person not previously convicted of felony, is punishable by transportation beyond the seas for life, or for any of the following offences (that is to say) :

1. Misprision of treason.
2. Offences against the Queen's title, prerogative, person, or government, or against either House of Parliament.
3. Offences subject to the penalties of *præmunire*.
4. Blasphemy and offences against religion.
5. Administering or taking unlawful oaths.
6. Perjury and subornation of perjury.
7. Making or suborning any other person to make a false oath, affirmation, or declaration, punishable as perjury or as a misdemeanor.
8. Forgery.
9. Unlawfully and maliciously setting fire to crops of corn, grain, or pulse, or to any part of a wood, coppice, or plantation of trees, or to any heath, gorse, furze, or fern.
10. Bigamy, and offences against the laws relating to marriages.
11. Abduction of women and girls.
12. Endeavouring to conceal the birth of a child.
13. Offences against any provision of the laws relating to bankrupts and insolvents.
14. Composing, printing, or publishing blasphemous, seditious, or defamatory libels.
15. Bribery.
16. Unlawful combinations and conspiracies, except conspiracies and combinations to commit any offence which such justices or recorder respectively have or has jurisdiction to try when committed by one person.
17. Stealing or fraudulently taking or injuring or destroying records or documents belonging to any court of law or equity, or relating to any proceedings therein.
19. Stealing or fraudulently destroying or concealing wills or testamentary papers, or any document or written instrument being or containing evidence of the title to any real estate, or any interest in lands, tenements, or hereditaments.

Provided always, that nothing herein shall be construed to give authority to the justices of the peace acting in and for the cities of London and Westminster, the liberty of the Tower of London, and the counties of Middlesex, Essex, Kent, and Surrey, to try any person or persons for any offence committed

or alleged to be committed within the jurisdiction of the Central Criminal Court, which such justices are restrained from trying under the 4 & 5 Wm. IV., c. 36, § 17.

Subject to the above restrictions, it seems to be clear that where an offence is created, and declared a misdemeanor by a statute passed since the institution of the office of a justice of the peace, it may be tried by a court of quarter sessions, unless there is some special direction that it shall be heard and determined by another court, and, therefore, with the exceptions above stated, the quarter sessions have power to try all indictable offences, whether offences at the common law or created by statute.

Many other matters have been also rendered cognizable by quarter sessions as a court of appeal, pursuant to various statutes. The principle of them relate to friendly societies, appointing inspection of weights and measures, district surveyors of highways, the licensing and conduct of publicans, the settlement and maintenance of the poor, the accounts of overseers and surveyors of the highways, bastardy, vagrancy, &c. Convictions and orders of magistrates are also often made the subject of appeal to the quarter sessions, and several statutes, *e. g.*, the Highway Act and Local Acts relating to Canals, &c., have empowered sheriffs to summons juries to be empanelled at the quarter sessions for trial of various questions respecting stopping or diverting roads, compensation for damages by widening roads, taking water from mills, &c. The sessions have still power to try minor offences against the game laws. *Dick. Quer. Sess. c. 1.* SET-OFF, *any counterbalance.*

The subject of set-off is a cross debt or claim, on which a separate action might be sustained, due to the party defendant from the party plaintiff. It is a defence created by statute, and has no existence at common law. It can only be pleaded in respect of mutual debts of a certain and definite character, and does not apply to a claim founded in damages, or in the nature of a penalty. The debt must be due in the same right and between the same parties. It must not be a mere equitable demand.

A defendant cannot now avail himself of a notice of set-off, it must be pleaded, and a particular thereof should be delivered with the plea. Where a defendant has pleaded a set-off, but does not appear at the trial to give evidence of it, the plaintiff may either take a verdict for the whole sum he proves to be due to him, subject to be reduced to the sum really due on a balance of accounts, if the defendant will afterwards enter into a rule not to sue for the set-off, or he may take a verdict for the smaller sum, deducting the amount of the set-off really due, with a special endorsement on the *postea*, as a foundation for the court to order a stay of proceeding, if an action should be brought for the amount of the set-off.

Where there are cross judgments in the same, or different actions in the same, or different courts between parties substantially the same, the one may be set-off against the other, and so may costs, monies, &c. *Story on Contracts*, 427; *Chit. Arch. Prac.* 457.

SETS OF EXCHANGE. It is common, and the practice has prevailed from a very early period, for the drawer to draw and deliver to the payee several parts, commonly called a set, of the same bill of exchange, any one part of which set being paid, the others are to be void. This is done in order to avoid delays and inconveniences which might otherwise arise, from the loss or mislaying or miscarriage of the bill, and also to enable the holder to transmit the same by different conveyances to the drawee, so as to ensure the most prompt and speedy presentment for acceptance and payment. The general usage in England and America is for the drawer to deliver a set of three parts of the bill to the payee or holder.

Where a set consisting of several parts is given, each part ought to contain a condition that it shall be payable only so long as all the others remain unpaid. *Story's Bills of Exchange*, 83.

SETTING SPRING GUNS, &c. It is enacted, by 7 & 8 Geo. IV., c. 18, § 1, that if any person shall set or place, or cause to be set or placed, any spring-gun, man-trap, or other engine calculated to destroy human life, or inflict grievous bodily harm upon a trespasser, or other person coming in contact therewith, such person shall be guilty of a misdemeanor. But this enactment does not extend to gins or traps, such as are usually set with the intent of destroying vermin, or to spring guns and other engines set in a dwelling-house for the protection thereof, from sunset to sun-rise.

SETTLEMENT, the act of giving possession by legal sanction; a jointure granted to a wife. See POOR; PROTECTOR OF THE SETTLEMENT.

SETTLEMENT, *act of*, a name given to the Statute 12 & 13 Wm. III., c. 2, by which the Crown was limited to her present Majesty's house; and some new provisions were added, at the same time, for better securing our religion, laws, and liberties, which the statute declares to be the birth-right of the people of England, according to the ancient doctrine of the common law.

SEVERAL ACTION, a particular single action.

SEVERAL COUNTS. Where a plaintiff has several distinct causes of action, he is allowed to pursue them cumulatively in the same action, subject to certain rules which the law prescribes as to joining such demands only as are of similar quality or character. Thus, he may join a claim of debt on bond with a claim of debt on simple contract, and pursue his remedy for both by the same action of debt. So if several distinct trespasses have been committed, these may all form the subject of one declaration in trespass.

But, on the other hand, a plaintiff cannot join in the same suit a claim of debt on bond and a complaint of trespass, these being dissimilar in kind. Such different claims or complaints, when capable of being joined, constitute different parts or sections of the declaration, and are known in pleading by the description of several counts. *Step. Plead.* 302; *Chit. Arch. Prac.* 147.

SEVERAL COVENANT, a covenant by two or more separately.

SEVERAL FISHERY, a right to fish derived from the owner of the soil.

It is a question, however, whether a person can have a several fishery without being owner of the soil. From the case of *Seymour v. Lord Courtenay*, 5 Burr. 2816, we learn that a right of several fishery does not necessarily imply an *exclusive* right, but may exist where no other person has a *co-extensive* right in the subject claimed.

SEVERAL INHERITANCE, an inheritance conveyed so as to descend to two persons severally, by moieties, &c.

SEVERAL TAIL, where land is entailed on two separately.

SEVERAL TENANCY [*tenura separalis*], those tenants who are separate, and not joined.

SEVERAL PLEAS, the rule against duplicity does not prevent a defendant from giving distinct answers to different claims or complaints on the part of the plaintiff. Nor is the defendant, in pleading different pleas to different parts of the declaration, confined to pleas of the same kind. But several pleas, avowries, or cognizances, shall not be allowed, unless a distinct ground of answer or defence is intended to be established in respect of each. *Rule of H. T.*, 4 Wm. IV.; *Chit. Arch. Prac.* 172.

SEVERALTY, *estates in*. He who holds lands or tenements in severalty, or is sole tenant thereof, is he that holds them in his own right only, without any other person being joined or connected with him, in point of interest, during his estate therein. 2 Bl. Com. 179.

SEVERANCE, the separating or severing of two or more persons or things.

SEWARD or SEAWARD, one who guards the sea-coast; *custos maris*.

SEWER, a fresh water trench or little river, encompassed with banks on both sides, to carry the water into the sea, and thereby preserve the lands against inundation, &c.

The court of commissioners of sewers is a restricted one; it is a temporary tribunal, erected by virtue of a commission under the Great Seal, which formerly used to be granted *pro re nata* at the pleasure of the Crown, but now at the discretion and nomination of the Lord Chancellor, Lord Treasurer, and chief justices, pursuant to the Statute of Sewers, 23 Hen. VIII., c. 5. Their jurisdiction is to overlook the repairs of the banks and walls of the sea-coast and navigable rivers; or, with consent of a certain proportion of the owners and occupiers, to

make new ones; and to cleanse such rivers, and the streams communicating therewith, and is confined to such county or particular district as the commission shall expressly name. The commissioners are a court of record, and may fine and imprison for contempt; and in the execution of their duty, may proceed by jury, or upon their own view, and may make order for the removal of any annoyances, or the safeguard and conservation of the sewers within their commission, either according to the laws and customs of Romney Marsh, or otherwise, at their own discretion. They may also assess such rates or scots upon the owners of land within their district as they shall judge necessary; and if any person refuse to pay them, the commissioners may levy the same by distress of his goods and chattels, or they may, by 23 Hen. VIII., c. 5, sell his freehold land, and 7 Anne, c. 10, his copyhold also, in order to pay such scots and assessments. By 4 & 5 Vict., c. 45, they are also empowered, for the purposes of defraying such expenses incident to the commission as in the act particularized, to tax in the gross in each parish such lands as are within the jurisdiction, but so that such lands shall contribute thereto, in proportion to the benefit received as compared with the lands of the other parishes; which tax shall be denominated the General Sewers Tax, and be recoverable by distress and sale. They are subject to the discretionary consideration of the Court of Queen's Bench. 3 *Step. Com.* 441.

SEXAGESIMA SUNDAY, the sixtieth day before Easter.

SEXHINDENI or **SEXHINDMEN**, the middle thanes, valued at 600s. See **HINDENI HOMINES**.

SEXTERY LANDS, lands given to a church or religious house for maintenance of a sexton or sacristan. *Cowell*.

SEXTON, the keeper of things belonging to divine worship. He is ordinarily chosen by the rector, but sometimes by the parishioners, according to custom. His particular duties are to cleanse the church, to open the pews, to fill up the graves, to provide candles and other necessities, and to prevent disturbance in the church. 59 *Geo. III.*, c. 134, §§ 6, 10.

SHACK, at large, a liberty of winter pasturage.

SHACK, *common of*, the right of persons occupying lands lying together in the same common field, to turn out their cattle after harvest to feed promiscuously in that field.

SHARES IN PUBLIC UNDERTAKINGS.

The property in public undertakings connected with land (such as mines, canals, and railroads, to which the public subscribe) is in the nature of realty, so far as regards the land itself, or the right of using it; and is for some purposes of the same nature as regards the fixtures connected with the concern. But where the property is vested by charter or act of Parliament in a body cor-

porate, the shares of the individual corporators in the concern itself are personal and not real estate; for such shares are merely the rights which each individual possesses as a partner to a share in the surplus profit derived from the employment of the capital, which is always a mixed fund, consisting in part at least of personal chattels, as well as lands and fixtures. 2 *Step. Com.* 264.

SHARPING-CORN, a customary gift of corn, which, at every Christmas, the farmers in some parts of England give to their smith for sharpening their plough-irons, harrow-tines, &c. *Blount*.

SHAW, a grove or wood, an underwood.

SHAWATORES, soldiers. *Cowell*.

SHEADING, a riding, tithing, or division in the Isle of Man, where the whole island is divided into six sheadings, in each of which there is a coroner or chief constable appointed by the delivery of a rod at the Tine-wald Court or annual convention. *King's Isle of Man*, 17.

SHEEP-SILVER, a service turned into money, which was paid in respect that anciently the tenants used to wash the lord's sheep.

SHEEP STEALING, a transportable felony. 7 & 8 *Geo. IV.*, c. 29, § 25; 7 *Wm. IV.* & 1 *Vict.*, c. 90.

SHELLEY'S CASE, *rule in*. If an estate of freehold be limited to A., with remainder to his heirs, general or special, the remainder, although importing an independent gift to the heirs as original takers, shall confer the inheritance on A. the ancestor.

SHEPWAY, *court of*, a court held before the Lord Warden of the Cinque Ports. A writ of error lies from the mayor and jurats of each port to the lord warden in this court, and thence to the Queen's Bench.

SHEREFFE, the body of the lordship of Caerdiff in South Wales, excluding the members of it.

SHERIFF, **SHIRE-REVE**, or **SHIRIFF** [*vicecomes*, *scire gerefa*, Sax., from *scyras*, to divide], the chief officer in every county or shire, who does all the Sovereign's business in the county, the Crown, by letters patent, committing the custody of the county to him alone.

The Judges, together with the other great officers and privy councillors, meet in the Exchequer on the morrow of St. Martin yearly; and then and there the Judges propose three persons, to be reported, if approved of, to the Queen, who afterwards appoints one of them to be sheriff, and such appointment generally takes place about the end of the following Hilary Term. If a sheriff die in office, the appointment of another is the mere act of the Crown.

By 3 & 4 Wm. IV., c. 99, it is provided, that whenever any person shall be duly pricked or nominated by the Sovereign to be sheriff of any county, except the county palatine of Lancaster, the same shall be forthwith notified in the London Gazette, and a warrant made out and signed by the clerk of the privy council, and transmitted

to the person so appointed; and the appointment of sheriff thereby made shall be as valid to all intents as if it had been made by patent under the Great Seal as formerly; and the sheriff so appointed shall thereupon and upon taking the accustomed oath of office, exercise all the authorities usually enjoyed by such officers. The oath of office here required does not affect the sheriffs of London or Middlesex. The Earl of Thanet is hereditary sheriff of Westmoreland. The counties of Cambridge and Huntingdon have one and the same sheriff.

Sheriffs, by virtue of several old statutes, are to continue in their office no longer than one year, but a sheriff may be appointed *durante bene placito*, and so is the form of the royal writ. Therefore till a new sheriff be named, his office cannot be determined. By 3 & 4 Wm. IV., c. 99, § 7, he shall, on expiration of his office, deliver to his successor a correct list of all prisoners in his custody, and of all unexecuted process. No man that has served the office of sheriff for one year can be compelled to serve again within three years after, if there be other sufficient person within the county. 1 Ric. II., c. 11. The discharge of the office is in general compulsory upon the party chosen; and if he refuse to serve, having no legal exemption, he is liable to indictment or information. Certain persons, such as militia officers, barristers, attorneys, and prisoners for debt, are not liable to serve; nor are persons under disability by judgment of law (as in the case of outlawry) to be appointed. By 13 & 14 Car. II., c. 21, § 7, no person shall be assigned for sheriff unless he have sufficient lands within the same to answer the Crown and people. And this is the only qualification required for the office.

His powers and duties are various:—

Judicially he hears and determines all causes of 20s. value and under, in his county court, and in divers other civil cases. He superintends the election of knights of the shire, coroners, and verderors.

As *keeper of the Queen's peace*, both by common law and special commission, he is the first man in the county, and superior in rank to any nobleman therein during his office.

Ministerially, he is bound to execute all process issuing out of the superior courts, and in this respect is considered as an officer of these courts.

As the *Queen's bailiff*, it is his business to preserve her rights within his bailiwick, i. e., county.

By 3 & 4 Wm. IV., c. 99, it is provided, that every sheriff shall, within one calendar month next after the notification of his appointment in the Gazette, by writing, under his hand, nominate some fit person to be his under-sheriff, and transmit a duplicate thereof to the clerk of the peace, to be by him filed among the records of his office; and that every under-sheriff (except of London and Middlesex) shall, before he enters

on the execution of his office, take the oath of office.

By 3 & 4 Wm. IV., c. 42, every sheriff is also directed to appoint a sufficient deputy, having an office within a mile of the Inner Temple Hall, for the receipt of writs, granting warrants thereon, making returns thereto, and accepting all rules and orders made as to the execution of any process or writ addressed to the sheriff. 3 *Step. Com.* 21.

SHERIFF CLERK, the clerk of the sheriff's court in Scotland, who alone can be notary to the seisins given by the sheriff, proceeding on precepts for infesting heirs holding of the Crown.

SHERIFF IN THAT PART OR BEHALF, a person appointed to supply the place of the sheriff for executing process in Scotland.

SHERIFFS' OFFICERS, bailiffs, who are either bailiffs of hundreds or bound bailiffs.

SHERIFF'S TOURN or ROTATION, a court of record held twice every year, within a month after Easter or Michaelmas, before the sheriff in different parts of the county; being, indeed, only the *turn* of the sheriff to keep a court leet in each respective hundred; this, therefore, is the great court leet of the county, as the county court is the court baron; for out of this, for the ease of the sheriff, was taken the court-leet, or view of frank-pledge: which see.

SHERIFFALTY, SHERIFFDOM, SHERIFFSHIP, or SHERIFFWICK [*vicecomitatus*], the office or jurisdiction of a sheriff.

SHERIFF GELD, a rent formerly paid by a sheriff, and it is prayed that the sheriff in his account may be discharged thereof. *Rot. Parl.*, 50 *Edw.* III.

SHERIFF-TOOTH, a tenure by the service of providing entertainment for the sheriff at his county courts; a common tax, formerly levied for the sheriff's diet.

SHEWING [*monstratio*], to be quit of attachment in a court, in plaints shewed and not avowed.

SHIFTING USE, a secondary or executory use, which when executed, operates in derogation of a preceding estate; as land conveyed to the use of A. and his heirs, with proviso, that when B. pays a certain sum of money, then to the use of C. and his heirs.

SHILLING [*solidus*, Lat., *scilling*, Sax.], among the English Saxons, passed for 5d.; afterwards it represented 16d., and often 20d. In the reign of the Conqueror, it was of the same denominative value as at this day. *Domesday*.

SHILWIT. See **CHILDWIT**.

SHIP-MONEY, an imposition formerly levied on port towns, and other places for fitting out ships; revived by Charles I., and abolished in the same reign. 17 Car. I., c. 14.

SHIPPER or SKIPPER, master of a ship; also, a seaman.

SHIPS, BRITISH, *laws relating to*. See **NAVIGATION ACTS**.

SHIPS-HUSBAND, a peculiar sort of agent, created and delegated by the owner of a

ship, to look after the repairs, equipment, management, and other concerns of the ship. *Story's Agency*, 31.

SHIP'S PAPERS, documents required for the manifestation of the property of the ship and cargo, &c.

They are of two sorts:—1st, those required by the law of a particular country, as the certificate of registry, license, charter-party, bills of lading and of health, required by the law of England to be on board all British ships: 2d, those required by the law of nations to be on board neutral ships, to vindicate their title to that character; they are the passport, sea brief, or sea letter, proofs of property, the muster roll or *rôle d'équipage*; the charter party, the bills of lading and invoices, the log book or ship's journal, and the bill of health. 1 *Marshall on Insur.* c. 9, § 6.

SHIRE [*comitatus*, Lat., *scyran*, Sax., to divide], a part or portion of the kingdom; a county divided by King Alfred.

SHIRE CLERK, he that keeps the county court.

SHIRE-MAN or **SCYRE-MAN**, anciently Judge of the county, by whom trials for land, &c., were determined before the Conquest.

SHIREMOTE, an assembly of the county or the shire at the assizes, &c.

SHIRE-REVE, a sheriff.

SHOOTING AT THE QUEEN. By 5 & 6 Vict., c. 51, it is enacted, that if any person shall wilfully discharge or point, aim, or present at the person of the Queen, any gun or other arms, whether containing explosive materials or not, or shall strike at or attempt to throw anything upon the Queen's person, or produce any fire-arms or other arms, or any explosive or dangerous matter near her Majesty's person, with intent in any of these cases to injure or alarm her, or commit a breach of the peace, he shall be guilty of a high misdemeanor, and may be transported for seven years, or imprisoned for not more than three years, and whipped not more than thrice during that period.

SHOOTING, STABBING, or WOUNDING, with intent to maim or to resist a lawful apprehension, a felony provided for by 7 Wm. IV. and 1 Vict., c. 85, § 4.

SHOPLIFTER, one who privately steals goods out of shops, &c.

SHORTFORD, *q. d.*, *fore-close*, the ancient custom of the city of Exeter is, when the lord of the fee cannot be answered rent due to him out of his tenement, and no distress can be levied for the same, the lord is to come to the tenement and there take a stone, or some other dead thing of the said tenement, and bring it before the mayor and bailiffs; and this he must do seven quarter days successively; and if on the seventh quarter day the lord is not satisfied his rent and arrears, then the tenant shall be adjudged to the lord to hold the same a year and a day; and forthwith proclamation is to be made in the court, that if any man claim any title to the said

tenement he must appear within the year and a day next following, and satisfy the lord of the said rent and arrears. But if no appearance be made, and the rent not paid, the lord comes again to the court and prays that, according to the custom, the said tenement be adjudged to him in his demesne as of fee, which is done accordingly, so as the lord has thenceforth the said tenement with the appurtenances to him and his heirs. This custom is called *short-ford*. *Izaak's Antiq. Exet.* 48.

A like custom in London by the ancient statute of Gavelet, attributed to 10 Edw. II., is called *forschot* or *forschoke*.

SHROUD STEALING, if any one, in taking up a dead body, steal the shroud or other apparel, it will be felony; for the property thereof remains in the executor, or whoever was at the charge of the funeral. 3 Inst. 110; 1 Hale P. C. 535.

SHRIEVE, a corruption of sheriff.

SHRIEVALTY, sheriffalty.

SI-ACTION, the conclusion of a plea to an action when the defendant demands judgment, if the plaintiff ought to have his action, &c.

Si à jure discedas vagus eris, et erunt omnia omnibus incerta. Co. Lit. 227.—(If you depart from the law, you will wander, and all things will be uncertain to every body.)

Si assuetis mederi possis nova non sunt tentanda. 10 Co. 142.—(Novelties are not to be introduced by way of experiment, although it is conceded that the things to which we are accustomed are susceptible of improvement.)

SICA, SICHA, a ditch.

SICH, a little current of water, which is dry in summer; a water furrow or gutter.

SICIUS, a sort of money current among the ancient English, of the value of 2d.

Sic interpretandum est ut verba accipiantur cum effectu. 3 Inst. 80.—(Such an interpretation is to be made that the words may be received with effect.)

Sicut, ad questionem facti, non respondent judices, ita ad questionem juris, non respondent juratores. Co. Lit. 295.—(Inasmuch as the judges do not decide on questions of fact, so the jury do not decide on questions of law.)

Sicut beatius est, ita majus est, dare quam accipere. Co. 57.—(Inasmuch as it is a more pleasant task, as also is it a more magnanimous one, to give than to receive.)

SICUT ALIAS, as at another time, or heretofore.

Sic utere tuo ut alienum non ledas. 9 Co. 59.—(Use your own rights so as you do not hurt another.)

Sicut natura nil facit per saltum, ita nec lex. Co. Lit. 238.—(In the same way as nature does nothing by a bound, so neither the law.)

Sicut subditus regi tenetur ad obedientiam, ita rex subdito tenetur ad protectionem, merito igitur ligeantia dicitur à ligando, quia continet in se duplex ligamen. 7 Co. 5.—(Inasmuch as a subject is bound to obey the king, so the king is bound to protect the subject; well,

therefore, is allegiance derived from the word *ligando* (to bind), because it contains a double binding.)

SIDE BAR RULES. See **RULES**.

SIDELINGS, meers between or on the sides of ridges of arable land.

SIDES-MEN, SYNODS-MEN, or QUEST-MEN, persons who were formerly appointed in large parishes to assist the churchwardens in enquiring into the manners of inordinate livers, and in presenting offenders at visitations.

SI FECERIT TE SECURUM, a species of original writ, so called from the words of the writ, which directed the sheriff to cause the defendant to appear in court, without any option given him, provided the plaintiff gave the sheriff security effectually to prosecute his claim.

SIGIL [*sigillum*, Lat.], seal, signature.

Sigillum est cera impressa, quia cera sine impressione non est sigillum. 3 Inst. 169.—(A seal is a piece of wax impressed, because wax without an impression is not a seal.)

SIGLA [*segel*, Sax.], a sail.

SIGNAL STATIONS. See 53 Geo. III., c. 128.

SIGNATURE, a sign or mark impressed upon any thing; a stamp, a mark.

SIGNET, a seal commonly used for the sign manual of the Sovereign.

In Scotland it is the seal by which the Queen's letters or writs, for the purpose of private justice, are now authenticated.

Clerks to the signet, or writers to the signet in Scotland, are nearly the same as attornies in England.

SIGNIFICAVIT, a writ issuing out of the Chancery upon certificate given by the ordinary of a man's standing excommunicate by the space of forty days, for the keeping him up in prison till he submit himself to the authority of the church. Obsolete.

Also, another writ, addressed to the justices of the bench, commanding them to stay any suit depending between such and such parties by reason of an excommunication alleged against the plaintiff, &c. *Reg. Orig.* 7.

SIGN-MANUAL, the royal signature; also, the signature of any one's name in his own handwriting.

SIGNUM, a cross prefixed as a sign of assent and approbation to a charter or deed, used by the Saxons.

SILENTARIUS, one of the privy council; also, an usher who sees good rule and silence kept in court.

Silentium in senatu est vitium. 12 Co. 94.—(Silence in the senate is a fault.)

Silent leges inter arma. 4 Inst. 70.—(The laws are silent amidst arms.)

SILVA CÆDUA, wood under twenty year's growth.

Si meliores sunt quos ducit amor, plures sunt quos corrigit timor. Co. Lit. 392.—(If love leads the better, fear restrains the many.)

SIMILITER (in like manner), where an issue of fact is tendered, the words are as follows: "and of this the defendant puts himself upon

the country;" or thus, "and this the plaintiff prays may be enquired of by the country;" the issue and form of trial are then both accepted on the other side (unless there appear grounds for demurrer), by the words following: "and the plaintiff (or the defendant, as the case may be) doth the like," which latter words are called the *joinder in issue*, or *similiter*. 3 Step. Com. 580.

The want of a *similiter* in criminal cases is cured by 7 Geo. IV., c. 64, § 21.

Similitudo legalis est, casuum diversorum inter se collatorum similis ratio; quod in uno similitum valet, valebit in altero. Dissimilium, dissimilis est ratio. Co. Lit. 191.—(Legal similarity is the similar reason which governs different cases, for what avails in one case, will avail in the other. Of things dissimilar, the reason is dissimilar.)

Simonia est voluntas sive desiderium emendi vel vendendi spiritualia vel spiritualibus adhaerentia. Contractus ex turpi causâ et contra bonos mores. Hob. 167.—(Simony is the will or desire of buying or selling spiritualties, or things pertaining thereto. It is a contract founded on a bad cause, and against morality.)

Simonia est vox ecclesiastica, à "Simone," illo "Mago," deducta qui donum Spiritus Sancti pecunia emi putavit. 3 Inst. 153.—(Simony is an ecclesiastical word, derived from that Simon Majus, who thought to buy the gift of the Holy Ghost with money.)

SIMONY [*venditio rei sacræ*], an unlawful contract for presenting a clergyman to a benefice. It works a forfeiture, whereby the right of presentation to a living is forfeited, and vested *pro hac vice* in the Crown. 31 Eliz., c. 6.

Many questions have arisen with regard to what is and what is not simony; and among others these points seem to be clearly settled:

1. That the sale of an advowson (whether the living be full or not) is not simoniacal, unless connected with a corrupt contract or design as to the next presentation, though if an advowson be granted during the vacancy of the benefice, the presentation on that vacancy can in no case pass by the grant.

2. That to purchase a next presentation, the living being actually vacant, is open and notorious simony, this being expressly in face of the statute.

3. That for a clerk to bargain for a next presentation, the incumbent being sick and about to die, was simony even before the Statute of Anne, and now by that statute to purchase, either in his own name or another's, the next presentation, and be thereupon presented at any future time to the living, is direct and palpable simony.

4. But a bargain by any other person for the next presentation (even if the incumbent be in *extremis*), if without the privity and without any view to the nomination of the particular clerk afterwards presented, is not simony.

5. That if a simoniacal contract be made with the patron, the clerk presented not

being privy thereto, the presentation for that turn shall indeed devolve to the Crown, as a punishment of the guilty patron, but the clerk who is innocent does not otherwise incur any disability or forfeiture.

6. That bonds given to pay money to charitable uses, on receiving a presentation to a living, are not simoniacal, provided the patron or his relations be not benefited thereby, for this is no corrupt consideration moving to the patron. 3 *Step. Com.* 121.

SIMPLE CONTRACT, a parol promise which may be either verbal or written, but not under seal.

SIMPLE CONTRACT DEBT, one where the contract upon which the obligation arises is neither ascertained by matter of record nor yet by deed or special instrument, but by mere oral evidence, the most simple of any, or by notes unsealed, which are capable of a more easy proof, and therefore only better than a verbal promise. 2 *Bl. Com.* 466.

SIMPLE DEPOSIT, a deposit made, according to the civil law, by one or more persons having a common interest.

SIMPLE DESTINATION, the settlement by the proprietor of an estate in Scotland, by which he substitutes the persons who are to succeed one another.

SIMPLE LARCENY, plain theft, without aggravation. See **LARCENY**.

SIMPLE WARRANTICE, an obligation to warrant or secure from all subsequent and future deeds of the grantor. *Scotch Phrase*.

SIMPLEX, simple, single.

SIMPLEX BENEFICIUM, a minor dignity in a cathedral or collegiate church, or any other ecclesiastical benefice opposed to a cure of souls; and which, therefore, is consistent with any parochial cure, without coming under the name of pluralities.

SIMPLEX JUSTICIARIUS, a style formerly used for any *præsidè* Judge that was not chief in any court.

SIMPLEX OBLIGATIO, single bond.

Simplex obligatio non obligat.—(A simple recommendation of goods, &c., by a vendor, binds not.)

Simplicitas est legibus amica: et nimia subtilitas in jure reprobatur. 4 *Co.* 8.—(Simplicity is favourable to the laws: and too much subtilty in law is to be reprobated.)

SIMULATIO LATENS, a species of feigned disease, in which disease is actually present, but where the symptoms are falsely aggravated, and greater sickness is pretended than really exists. *Beck's Med. Jurisp.* 3.

SIMULATED and CONCEALED INSANITY. There is no disease, says Zacchias, more easily feigned, or more difficult of detection, than the one under consideration. And hence, many great men of ancient times, in order to elude the danger that impended over them, have pretended it; as David, Ulysses, Solon, and Brutus. On the other hand, Dr. Ray declares that, "those who have been longest acquainted with the manners of the insane, and whose practical acquaintance with the disease furnishes the

most satisfactory guaranty of the correctness of their opinions, assure us that insanity is not easily feigned; and consequently that no attempt at imposition can long escape the efforts of one properly qualified to expose it." Georget does not believe, "that a person who has not made the insane a subject of study, can simulate madness as to deceive a physician well acquainted with the disease." *Des Maladies Mentales*, 60. Mr. Haslam declares that, "to sustain the character of a paroxysm of active insanity, would require a continuity of exertion beyond the power of a sane person." *Med. Jurisp. of Insan.* 322. Dr. Conolly affirms, "that he can hardly imagine a case which would be proof against an efficient system of observation." *Inquiry concerning indic. Insan.* 467. Another writer, while admitting that attempts to deceive are sometimes successful, on account of the imperfect knowledge of the operations of the mind in health and disease, possessed by medical men in general, observes however, that when we consider the "very peculiar complex phenomena which characterize true madness, and reflect on the general ignorance of those who attempt to imitate them, we have no right to expect such a finished picture as could impose on persons well acquainted with the real disease." *Cyc. Prac. Med.*, art. *Feigned Diseases*, 146.

With such authority before us to urge as an objection against the free admission of insanity in excuse for crime, the extreme difficulty of detecting attempts to feign it can no longer be anything more than the plea of ignorance or indolence. The only effect such difficulty should have on the minds of those who are to form their opinions by the evidence they hear, should be to impress them with a stronger sense of the necessity of an intimate practical acquaintance with insanity on the part of the medical witness, and convince them that, without this qualification, the testimony of the physician is but little better than that of any one else.

As to the tests to detect simulated insanity, consult *Beck's Med. Jurisp.* 447.

Among us, the choice of the means for establishing the existence of insanity, when concealed, is left to individual sagacity. This no doubt is sufficient, where great practical acquaintance with insanity readily suggests the course best adapted to each particular case; but the great majority of medical men will feel the need of some system or order of proceeding that will simplify their enquiries, and render them more efficient. The French arrange their means into three general divisions or classes, which are made use of each in succession, when the preceding class has failed of its object. They are called, (1) the interrogatory, (2) the continued observation, and (3) the inquest.

(1) *The interrogatory* embraces only those

means of observation which are applicable on a personal interview with the patient. After learning generally his moral and intellectual character, his education and habits of living, the duration and nature of his mental delusion (if it can be ascertained from his acquaintances), and the state of his relations to others; and after observing the expression of his countenance, his demeanour and general appearance, a direct examination of his case may be entered upon.

(2) *The continued observation*, systematically continued for some time, may establish the fact of insanity in doubtful cases, after several personal interviews have completely failed. Opportunities, therefore, should be demanded for visiting the patient freely and frequently; for watching him at times when he supposes himself unobserved; and for exercising a general surveillance over his conduct and conversation. Those about him should be enjoined to watch his movements; and he should often, but cautiously, be led to speak of the motives of those who are anxious to prove his insanity. It often happens too, that those who are most successful in concealing every indication of disordered mind in their conversation, will betray themselves the moment they commit their thoughts to paper.

(3) *The inquest*. When the above means fail, our inquiries must take a wider range, and be directed to the previous history of the patient, as made known by the testimony of friends and relations and those who have been connected with him in business, or had any other good opportunity of becoming acquainted with his mental condition. "The inquest," says Georget, "consists in collecting information respecting the patient's condition before and after the presumed disease, and the causes suspected to have impaired his mind. For this purpose, we consult his writings, and recur to the testimony of those who have been about him and conversed with him; who have been able to observe him closely, and to witness his insane actions, and his irrational discourse. We should be particularly careful however to require of witnesses *facts rather than opinions*. We should ascertain if madness be a disease of the family; if he have already evinced a degree of singularity in his moral and intellectual character, or exaltation of any kind; if he have been exposed to the influence of powerful causes, such as chagrins, severe and repeated crosses, reverses of fortune, &c.; if, without any real motive, he has manifested any change of his habits, tastes, or affections; in short, we should inquire into all those circumstances which so frequently precede the development." *Des Maladies Mentales*, 57; *Ray's Med. Jurisp. of Insanity*, c. xvi.

SIMUL CUM (together with).

Si mulier nobilis nupserit ignobili viro, desinit esse nobilis: nisi nobilitas fuit nativa. 4 Co. 118.—(If a noble woman marry a man not noble, she loses her nobility, unless she were noble by birth.)

SINE ASSENSU CAPITALI, an abolished writ where a bishop, dean, prebendary, or master of an hospital, alienated the lands holden in right of his bishopric, deanery, house, &c., without the assent of the chapter or fraternity; in which case his successor should have this writ. *F. N. B.* 195.

SINECURE [*sine*, Lat., without, and *cura*, care], an office which has revenue without any employment.

SINECURE RECTOR, a rector without cure of souls.

SINE DIE, without day.

SINGLE AVAIL OF MARRIAGE, the value of the tocher or marriage portion of the vassal's wife, which is modified to two years' rent of the vassal's free estate. *Scotch Term*.

SINGLE BOND [*simplex obligatio*], a deed whereby the obligor obliges himself, his heirs, executors, and administrators to pay a certain sum of money to the obligee at a day named.

SINGLE COMBAT, *trial by*. See **BATTEL**.

SINGLE ESCHEAT, when all a person's movables fall to the Crown as a casualty, because of his being declared rebel.

SINGULAR SUCCESSION, a purchaser is so termed in the Scotch law, in contradistinction to the heir of a landed proprietor, who succeeds to the whole heritage by regular title, of succession or universal representation, whereas the purchaser acquires right solely by the single title acquired by the disposition of the former proprietor.

SINKING FUND, the surplus revenue of the kingdom beyond the actual expenditure, which is directed to be applied towards the reduction of the National Debt; it is regulated by 10 Geo. IV., c. 27.

SI NON OMNES, *writ of*, a writ on association of justices, by which, if all in commission cannot meet at the day assigned, it is allowed that two or more of them may finish the business. *F. N. B.* 185; *Reg. Orig.* 202. And after the writ of association, it is usual to make out a writ of *si non omnes*, addressed to the first justices, and also to those who are associated with them, which, reciting the purport of the two former commissions, commands the justices, that if all of them cannot conveniently be present, such a number of them may proceed, &c. *F. N. B.* 111.

SIPESSOCUA, a franchise, liberty, or hundred. *Si plures conditiones ascriptæ fuerunt donationi conjunctim, omnibus est parendum; et ad veritatem copulativè requiritur quod utraque pars sit vera: si divisim, cuilibet vel alteri eorum satis est obtemperare; et in disjunctivis, sufficit alteram partem esse veram.* Co. Lit. 225.—(If several conditions are conjunctively written in a gift, the whole of them must be complied with: and for the establishment of truth, it is required that every part taken together shall be true: if the conditions are separate, it is sufficient to comply with either one or the other of them: and in disjunctive things it is sufficient that each part be true.) **SIQUIS** (if any one), an advertisement; a notification.

Si quis custos fraudem pupillo fecerit, à tutela removendus est. Jenk. Cent. 39.—(If a guardian do fraud to his ward, he shall be removed from his guardianship.)

Si quis plures filios habuerit, jus proprietatis primò descendit ad primogenitum, eò quod inventus primus est in rerum naturâ. Co. Lit. 14.—(If a man have several sons, the right of property shall, in the first place, descend to the eldest of them : inasmuch as by the order of nature he stands in the first place.)

Si quis prægnantem uxorem reliquit, non videtur sine liberis decessisse. Reg. Jur. Civ.—(If a man leave his wife pregnant, he shall not be considered to have died without children.)

Si quis unum percusserit, cum alium percutere vellet, in feloniam tenetur. 3 Inst. 51.—(If a man kill one, meaning to kill another, he is held guilty of felony.)

SI RECOGNOSCAT, a writ that, according to the old books, lay for a creditor against his debtor, who had acknowledged before the sheriff in the county court, that he owed his creditor such a sum received of him. O. N. B. 68.

SIR JOHN HOBHOUSE'S ACT, 1 & 2 Wm. IV., c. 60, passed for regulation of vestries.

SISE, corrupted from assise.

Si suggestio non sit vera, literæ patentes vacuæ sunt. 10 Co. 113.—(If the suggestion be not true, the letters patent are void.)

SITHCUNDMAN, the high constable of a hundred.

SITTINGS IN LONDON AND WESTMINSTER. London and Westminster are not comprised within any circuit, but courts of *Nisi Prius* are held there for the same purpose in and after every term, before the chief or other Judges of the superior courts, at what are called the London and Westminster sittings. Criminal cases are tried at the Central Criminal Court.

SITTINGS IN BANC, the Judges sitting on the bench of their respective courts at Westminster.

SIX CLERKS IN CHANCERY, officers who received and filed all proceedings, signed office copies, attended court to read the pleadings, &c. They were abolished by 5 Vict., c. 5.

SIXHINDI, servants of the same nature as rod-knights. *Anc. Inst. Eng.*

SKYVINAGE or **SKEVINAGE**, the precincts of Calais. 27 Hen. VI., c. 2.

SLAINS, *letters of*, letters heretofore subscribed by the relations of a person slain, declaring that they had received an assignment or recompense, and containing an application to the Crown for a pardon to the murderer. *Scotch Practice.*

SLANDER, the maliciously defaming of a person in his reputation, profession, or livelihood, by words; as a libel is by writing, &c. It is actionable.

SLAUGHTERING HORSES. Persons slaughtering horses or cattle, which shall not be

for butcher's meat, shall previously take out a licence, and affix over their premises a proper description of their trade, according to the provisions of 26 Geo. III., c. 71, intitled "An Act for Regulating Houses and other places kept for the purpose of slaughtering Horses," under the penalty of not more than 5*l.* nor less than 10*s.*; and, moreover, shall slaughter such horse or cattle within three days after such shall have come into his possession, and shall, in the meantime, provide them with suitable food, under a penalty of not less than 40*s.*, or more than 5*l.*, for every day on which this provision shall be violated. 5 & 6 Wm. IV., c. 59, §§ 7 & 8, amended by 7 & 8 Vict., c. 87.

SLAVERY, that civil relation in which one man has absolute power over the life, fortune, and liberty of another. It cannot subsist in England.

Slaves cannot breathe in England; if their lungs

Receive our air, that moment they are free :

They touch our country, and their shackles fall.

The system of slavery was abolished by 3 & 4 Wm. IV., c. 73.

SLEDGE, a hurdle to draw traitors to execution. 1 Hale P. C. 82.

SLIPPA, a stirrup.

There is a tenure of land in Cambridge-shire, by holding the sovereign's stirrup.

SLOUGH SILVER, a rent paid to the castle of Wigmore, in lieu of certain days' work in harvest, heretofore reserved to the lord from his tenants.

SMALL DEBTS COURTS, innumerable tribunals dotted about the country by the County Courts Act, 9 & 10 Vict., c. 95, the purpose being to bring justice home to every man's door. There are several books published upon this subject, but the practice is yet in a state of uncertainty.

SMALL POX. By 3 & 4 Vict., c. 29, intitled "An Act to extend the Practice of Vaccination (amended by 4 & 5 Vict., c. 32)," the guardians of parishes and unions, or the overseers of parishes, where there are no guardians, are directed to contract (subject to the regulation of the Poor Law Commissioners) with the medical officers of the parish, or other persons, for the vaccination of all persons there resident; and such medical officers or other practitioners shall report to the overseers or guardians, from time to time, the number of persons successfully vaccinated; with such further particulars as the guardians and overseers, under direction of the Poor Law Commissioners, may require; and any person who may produce, or attempt to produce, by inoculation or otherwise, the disease of small pox in any person in England, Wales, or Ireland, shall be liable to be proceeded against, and convicted summarily before two or more justices of the peace in petty sessions, and for every such

offence be imprisoned for a term not exceeding one month.

SMALL TITHES (otherwise called *privy*), the mixed and personal tithes.

SMOKE FARTHINGS, pentecostals: which see.

SMOKE SILVER, a modus of 6d. in lieu of tithe wood.

SMUGGLING, the offence of importing prohibited articles, or of defrauding the revenue by the introduction of articles into consumption, without paying the duties chargeable upon them. It may be committed indifferently either upon the excise or customs revenue.

"To pretend," says Adam Smith, "to have any scruple about buying smuggled goods, though a manifest encouragement to the violation of the revenue laws, and to the perjury which almost always attends it, would, in most countries, be regarded as one of those pedantic pieces of hypocrisy, which, instead of gaining credit with any body, seems only to expose the person who affects to practise them to the suspicion of being a greater knave than most of his neighbours. By this indulgence of the public, the smuggler is often encouraged to continue a trade which he is thus taught to consider as, in some measure, innocent; and when the severity of the revenue laws is ready to fall upon him, he is frequently disposed to defend with violence what he has been accustomed to regard as his just property; and from being at first rather imprudent than criminal, he at last, too often, becomes one of the most determined violators of the laws of society."

The 3 & 4 Wm. IV., c. 53, was passed to prevent smuggling.

SNOTTERING SILVER, a small duty paid by servile tenants in Wylegh to the Abbot of Colchester.

SOC, SOK, SOKA, jurisdiction; a power or privilege to administer justice and execute laws; also, a shire, circuit, or territory.

SOCA, a seignory or lordship, enfranchised by the King, with liberty of holding a court of his *soc-men* or *socagers*, i. e., his tenants.

SOCAGE or **SOCAGE**, a tenure by any certain or determinate service.

Socagium idem est quod servitium socæ; et soca, idem est quod caruca. Co. Lit. 86.—(Socage is the same as service of the plough; and socage is the same thing as caruca (plough).)

SOCAGER, a tenant by socage.

SOCIETY, *benefit building*. The sanction and assistance of the legislature have been granted to societies established to raise a subscription fund by advances, from which the members shall be enabled to build or purchase dwelling houses, or to purchase land; such advances being secured to the society by mortgage of the premises so built or purchased.

By 6 & 7 Wm. IV., c. 32, societies of this description, upon the certificate and deposit of their rules, as required by the acts relating to friendly societies, are enabled to transfer shares without payment of stamp duty, and to effect reconveyances of the mortgaged

property by a mere receipt for the money advanced, without incurring the expense of a formal instrument.

SOCMAN, a soccager.

SOCMANCY, free tenure by soccage.

SOCUA, a privilege, liberty, or franchise.

SOCOME, a custom of grinding corn at the lord's mill.

Bond socome is where the tenants are bound to it. *Blount*.

SODOMY, the crime against nature.

It may be required to examine the individual on whom it has been committed. If, without consent, inflammation, excoriation, heat, and contusion will probably be present. The effects of a frequent repetition of the crime are a dilatation of the sphincters, ulcerations on the parts, or a livid appearance and thickening. It has been suggested that secondary symptoms of lues might be mistaken for these, but Beck is hardly of this opinion. No man, however, ought to be condemned on medical proofs solely: the physician should only deliver his opinion in favour or against an accusation already preferred. *Beck's Med. Jurisp.* 119.

Sodomie est crime de Majestie vers le Roy Celestre. 3 Inst. 58.—(Sodomy is high treason against the King of Heaven.)

SODOR AND MAN, *bishopric of*, annexed to the province of York by Henry VIII. 33 *Hen. VIII.*, c. 31.

SOKE REEVE, the lord's rent gatherer in the soca.

SOLE, not married.

SOLE CORPORATION, one person and his successors, who are incorporated by law, in order to give them some legal capacities and advantages, particularly that of perpetuity, which in their natural persons they could not have had; as the Sovereign, a bishop, parson, &c.

Solemnitas intervenire debet in mutatione liberi tenementi, ne contingat donationem deficere pro defectu probationis. Co. Lit. 48.—(Solemnity ought to intervene in an exchange of free tenement, lest it happen that the gift fail through want of proof.)

Solemnitates juris sunt observandæ. Jenk. Cent. 13.—(The solemnities of law are to be observed.)

Solent præsidēs in carcere continendos damnare, ut in vinculis contineantur, sed hujus modi interdicta sunt à lege, quia carcer ad continendos, non ad puniendos haberi debet. Cum autem taliter captus, coram justiciarios est procudendus, produci non debet ligatis manibus (quàmvis interdum gestans compedes propter evasionis periculum) et hoc ideo ne videatur coactus ad aliquam purgationem suscipiendam. 3 Inst. 34.—(It has been a practice to condemn persons confined in prisons to be bound in fetters; but commands of this sort are contrary to law, for a prison is meant as a place of confinement, not of punishment: therefore, when a captive is brought before his Judges, his hands should not be fettered, although his feet may be, to prevent his escape; least, by their being so,

it should appear that he was already in a state of punishment.)

SOLE TENANT [*solus tenens*], he that holds lands by his own right only, without any other person being joined with him.

SOLICITATION, it is an indictable offence to solicit and incite another to commit a felony, although no felony be in fact committed. 2 East, 5.

SOLICITOR GENERAL, a law officer of the Crown, appointed by patent during the royal pleasure. He is usually knighted, and is a member of the House of Commons. He has the care and concern of managing the Sovereign's affairs, and has fees for pleading, besides other fees arising by patents, &c.

In the household of a queen consort there belongs an officer with this appellation.

SOLICITORS, officers of the Court of Chancery, who are retained by clients to sue and defend for them. See the ATTORNEYS AND SOLICITORS' ACT, 6 & 7 Vict., c. 73.

SOLIDATUM, absolute right or property.

SOLIDUM. To be bound *in solidum* is to be bound for the whole debt jointly and severally with others; but where each is bound for his share, they are said to be bound *pro rata parte*.

SOLINUS TERRÆ, a ploughland.

SOLITARY CONFINEMENT. By 7 Wm. IV. and 1 Vict., c. 90, § 5, it is provided, that it shall not be lawful for a court to direct that any offender shall be kept in solitary confinement for any longer period than one month at a time, or than three months in the space of one year.

Solo cedit, quicquid solo plantatur. Office of Exec. 57.—(What is planted in the soil belongs to the soil.)

Sol sine homine generat herbam. Ibid. 68.—(The sun makes the grass grow without man's assistance.)

SOLVENDO ESSE, to be in a state of solvency, *i. e.*, able to pay.

SOLVERE PŒNAS, to pay the penalty.

SOLVIT AD DIEM, a plea in an action of debt on bond, &c., that the money was paid at the day limited.

SOLVIT ANTE DIEM, a plea that the money was paid before the day limited.

SOLVIT POST DIEM, a plea that the money was paid after the day appointed.

SOLUTIONE FEODI MILITIS, &c., or **FEODI BURGENS**, &c., old writs whereby knights of the shire and burgesses might have recovered their wages or allowance if refused. 35 Hen. VIII., c. 11.

Solum rex hoc non facere potest, quod non potest injustè agere. 11 Co. 72.—(This alone the king cannot do, he cannot act unjustly.)

Solus Deus facit hæredem, non homo. Co. Lit. 5.—(God alone makes the heir, not man.)

Solutio pretii, emptionis loco habetur. Jenk. Cent. 56.—(The payment of the price stands in the place of the sale.)

Sommonitiones aut citationes nullæ liceant fieri infra palatium regis. 3 Inst. 141.—(No summonses or citations are permitted to be served within the king's palace.)

SOMNAMBULISM, whether this condition is really anything more than a co-operation of the voluntary muscles with the thoughts which occupy the mind during sleep, is a point very far from being settled with physiologists. Not only is locomotion enjoyed, as the etymology of the term signifies, but the voluntary muscles are capable of executing motions of the most delicate kind.

There is a form of this affection called *ecstasis* or cataleptic somnambulism, from its being conjoined with a kind of catalepsy, in which the walking and other active employments are replaced by what appears to be a deep quiet sleep, the patient conversing with fluency and spirit, and exercising the mental faculties with activity and acuteness.

Somnambulism may sometimes incapacitate a person from the proper performance of the duties and engagements of his situation, and then unquestionably it may impair the validity of contracts and other civil acts to which he is a party. By rendering him troublesome, mischievous, and even dangerous, it furnishes good grounds for annulling contracts of service, whether it existed previously and was concealed, or had made its appearance at a later date. Whether it should be considered a sufficient defence of breach of promise of marriage, or a valid reason for divorce when concealed from one of the parties previous to the marriage, are questions which do not properly admit of a general answer.

Hoffbauer suggests as a reason for not regarding the criminal actions of the somnambulist with too much indulgence, that they have probably originated, if not in premeditation, at least in the deep and deliberate attention which the mind has given to the subject when awake.

Foderè too, by a somewhat similar kind of logic, comes to the conclusion that the acts of a somnambulist, instead of resulting from mental delusion, are more independent than any others, because they are the free and unconstrained expression of his waking thoughts and designs, and therefore that they are not altogether excusable.

He seems to have forgotten, observes Dr. Ray (*Med. Jurisp. of Insanity*), that by no human laws are men responsible for their secret thoughts, but only for their words and acts.

SOMNER, one who cites or summons.

SON ASSAULT DEMESNE, a justification in an action of assault and battery, because the plaintiff made the first assault, and what the defendant did was in his own defence.

SONTAGE, a tax of 40s. heretofore laid upon every knight's fee.

SORCERY. No prosecution shall for the future be carried on against any person for witchcraft, sorcery, enchantment, or conjuration, or for charging another with any such offences. Persons pretending to use witchcraft, tell fortunes, or discover stolen goods by skill in any occult or crafty science, are punishable by imprisonment (9 Geo. II., c. 6):

persons using any subtle craft, means, or device, by palmistry or otherwise, to deceive his majesty's subjects, are to be deemed rogues and vagabonds, and to be punished with imprisonment and hard labour. 5 *Geo. IV., c. 83, § 4.*

SOREHON or **SORN**, a kind of arbitrary exaction or servile tenure formerly in Scotland as likewise in Ireland. Whenever a chieftain had a mind to revel, he came down among the tenants with his followers, by way of contempt called *giliwifits*, and lived on free quarters.

SORORICIDE, the murder of a sister.

SORS, principal, to distinguish it from interest.

SOTHSAGA or **SOTHSAGE** [*soth*, true, and *saga*, Sax., testimony], history. *Cowell.*

SOUL-SCOT, a mortuary.

SOUTH SEA FUND, the produce of the taxes appropriated to pay the interest of such part of the National Debt as was advanced by the South Sea Company and its annuitants.

SOVEREIGN, a chief or supreme person : see **QUEEN**; also, a piece of money.

SOVEREIGN POWER or **SOVEREIGNTY**, the power of making laws.

SOWLEGROVE, February, so called in South Wales.

SOWNING AND ROWNING, the apportioning or placing of cattle on a common or goods in a house, according to the respective rights of various parties interested. *Scotch Phrase.*

SOWNE [*souvenue*, Fr., remembered], such as is leviable.

SPADARIUS, a sword bearer. *Blount.*

SPATÆ PLACITUM, a court for the speedy execution of justice on military delinquents.

SPEAKER OF THE HOUSE OF COMMONS, a member of the House, elected by a majority of the votes to act as chairman or president in putting questions, reading briefs or bills, keeping order, reprimanding the refractory, adjourning the House, &c.

SPEAKER OF THE HOUSE OF LORDS, the Lord Chancellor.

SPEAKING DEMURRER, one in which new facts, which do not appear upon the face of the bill in equity, are introduced.

SPEAKING WITH PROSECUTOR. It is not uncommon when a person is convicted of a misdemeanor, more immediately affecting an individual, as a battery, imprisonment, or the like, for the court to permit the defendant to speak with the prosecutor before any judgment is pronounced, and if the prosecutor declare himself satisfied, to inflict but a trivial punishment. This is done to reimburse the prosecutor his expenses, and make him some private amends, without the trouble and uncertainty of a civil action.

SPECIAL ADMINISTRATION, a limited one, as of certain specific effects, such as a term of years.

SPECIAL BAIL, bail above or to the action. See **BAIL**.

SPECIAL BAILIFF, one chosen by a party himself, to execute process in the sheriff's

hands : this relieves the sheriff of all responsibility.

SPECIAL BASTARD, one born of parents before marriage, the parents afterwards intermarrying.

SPECIAL CASE. Where a difficulty in point of law arises upon a trial, the jury may, instead of finding a special verdict, find a general verdict for the plaintiff, subject to the opinion of the Judge or the court above, on a special case stated by the counsel on both sides with regard to the matter of law; which has this advantage of a special verdict, that it is attended with much less expense and obtains a much speedier decision. The judge usually gives liberty to either party to have the special case afterwards turned into a special verdict, should it become necessary to take the opinion of a court of error on the case. Unless the Judge thus expressly reserves this power of turning the special case into a special verdict, it cannot be done except by consent.

The case ought to be dictated by the Judge at the trial, and signed by counsel on both sides before the jury are discharged; and if, in settling it, any difference of opinion arise about a fact, the opinion of the jury may be taken, and the fact stated accordingly. In practice, however, the case is afterwards drawn by the junior counsel of the plaintiff, and settled by the junior counsel for the defendant in the same manner as a special verdict, the Judge settling any disputes from his notes. The *postea* is stayed in the hands of one of the Masters or associates until the question is argued and determined, after which a general verdict is entered for the prevailing party. *Chit. Arch. Prac.* 319.

By 3 & 4 Wm. IV., c. 42, § 25, it shall be lawful for the parties on any action or information after issue joined, by consent, and by order by any of the Judges of the superior courts, to state the facts of the case in the form of a special case for the opinion of the court, and to agree that a judgment shall be entered for the plaintiff or defendant by confession, or of *nolle prosequi*, immediately after the decision of the case, or otherwise, as the court may think fit; and judgment shall be entered accordingly.

Where a point of law arises in the course of a suit in equity, the Judge of the court of equity may, if he wish to have the opinion of a court of law upon it, direct a special case to be made out, and sent to a particular court of law, there to be argued and returned, with the opinion of such court certified upon it.

SPECIAL DEMURRER, a pleading for some defect in the form of the opposite party's pleading.

SPECIAL INJUNCTIONS, those prohibitory writs or interdicts against acts of parties, such as waste, nuisance, piracy, &c. See **INJUNCTION**.

SPECIAL JURY, upon the motion of either the plaintiff or defendant the court shall order a special jury to be struck before the

proper officer, and the jury so struck shall be the jury to be returned for the trial of the issue. The party, however, upon whose application it is struck, shall bear all the expenses attendant upon the trial of the cause by such special jury, and shall not be allowed, upon taxation of costs, any more or other costs than he would have been entitled to if the cause had been tried by a common jury, unless the Judge shall immediately after the verdict certify, upon the back of the record, that it was a proper cause to be tried by a special jury.

SPECIAL OCCUPANCY, where an estate is granted to a man and his heirs during the life of *cestui que vie*, and the grantee die without alienation, and while the life for which he held continues, the heir will succeed, and is called a special occupant. And see *WILL'S ACT*, 1 Vict., c. 26, §§ 3, 6.

SPECIAL PAPER, a list kept in court for putting down demurrers, &c., to be argued.

SPECIAL PLEAS, those pleas which are not in the form of what are still called general issues, but they induct affirmative matter, as infancy, coverture, statute of limitations.

Special pleas in bar in criminal matters go to the merits of the indictment, and give a reason why the prisoner ought to be discharged from the prosecution: they are of four kinds, viz.: a former acquittal, a former conviction, a former attainder, or a pardon.

SPECIAL PLEADING, the science of pleading. It is a forensic invention, due to the dialectic genius of the middle ages.

SPECIAL PROPERTY, qualified property: which see.

SPECIAL SESSIONS. See *SESSIONS OF THE PEACE*.

SPECIAL VERDICT, a special finding of the facts of a case, leaving to the court the application of the law to the facts thus found. It is dictated by the court, and signed by counsel on both sides, before the jury are discharged. *Chit. Arch. Prac.* 316.

SPECIALTY, a contract by deed.

SPECIALTY DEBTS, bonds, mortgages, debts secured by writing under seal; they rank next to those of record, and above simple contract debts.

SPECIFICATION, a description of a patent directed to be enrolled in the High Court of Chancery, within one month from the date of the letters patent, its object being to put the public in full possession of the inventor's secret, so that any person may be in a condition to avail himself of it, when the period of exclusive privilege has expired.

Also, in Scotland, the making of new property from materials belonging to another, as wine from grapes.

SPECIFIC LEGACY. See *LEGACY*.

SPECIFIC PERFORMANCE OF AGREEMENTS. This is one of the most peculiar and important branches of equitable jurisdiction, and has been justly considered the most useful; for whilst at law (excepting in the action of *detinue* for a chattel, and in ejectment for the recovery of buildings or

lands), *damages* only, and not the thing itself, can be recovered; yet, by bill in equity, a decree may be obtained that the complainant shall have of the defendant the precise performance of the agreement in certain cases, and generally the costs of the suit. This jurisdiction is analogous, in some respects, to the writ of *mandamus* at law, commanding the party to which the writ is addressed to perform some act; but the writ of *mandamus* is generally confined to public matters or public officers, whilst a bill for specific performance is principally a private remedy. The fundamental maxim, "*Equity looks on that as done which is to be done*," is the groundwork upon which is reared the whole superstructure of this branch of equitable learning. Take the following instances as examples of this position:—The vendor of an estate is, from the time of this contract, considered only as a trustee for the vendee, and the vendee is, as to the purchase money, a trustee for the vendor. The estate, provided the contract be binding, and a good title can be made, is considered as the real property of the vendee, and vendible, chargeable, and deviseable by him, even upon general and sweeping words in a will, and would descend to his heir, and may be mortgaged. If, therefore, the vendor die before the period when the estate is to be conveyed, the heir is bound to convey, though no action at law will lie; and the heir of the vendee, even a collateral heir, is entitled to insist on the completion of a contract to purchase land out of the personal estate of his ancestor. Again: money, articulated or directed to be laid out in land, is considered as land, and has all the incidents of a real estate: it is no longer considered as real estate.

As to what agreements will be decreed to be specifically performed:—

An agreement must be according to the forms prescribed by law—must be made by parties able and willing to contract, and must be certain and defined, equal and fair.

But if a parol agreement be partly performed, that is, if an act have been done, not a mere voluntary act, nor merely introductory, nor ancillary to the agreement, but apt performance of the substance of the agreement, and which would not have been done unless on account of the agreement; an act, in short, unequivocally referring to and resulting from the agreement, and such that the party would suffer an injury, amounting to fraud, by the refusal to execute that agreement; it will be decreed to be specifically performed.

A parol agreement for a lease made by a tenant for life, in pursuance of a power, if partly performed, might be enforced against the tenant for life, but it could not be enforced against a remainder-man; for though the tenant for life is bound, it is principally on the ground of fraud which is personal, and which does not apply to the remainder-man, unless he acquiesce after the death of tenant for life.

If the vendee, on a parol agreement for the sale of lands, is let into possession by the vendor, this has been held to amount to a part performance; *à fortiori*, if the party enter and improve them, or build, or underlet; and what was the parol agreement clearly appears—it will be enforced.

It has not yet been settled whether the payment of money, either in part, by way of earnest, or in full, for the purchase, is a part performance or not, the cases rather lean towards the negative. *S. C.*, 19 *Ves.* 479.

The following acts will not amount to a part performance:—Giving instructions for conveyances; taking a view of the estate; placing a deed in a solicitor's hands to prepare a conveyance; or, where there was a parol agreement for a compromise, and a division of the estate by arbitration; acts done by arbitrators towards the execution of their duty, such as surveying, &c.

If the defendant admit the parol agreement by his answer, he is not bound to perform it if he plead the Statute of Frauds, for the statute requiring the agreement to be in writing was only to afford a more solemn proof of the agreement. "But," says Mr. Maddock, "what proof can be better than the admission of the party that he made it? The statute is thus turned into a shield for dishonesty."

If a person agree to sell lands he has not, and afterwards acquire them, he will be compelled to perform his agreement; so, if he have not a complete title at the time of filing the bill, the court will decree specific performance, if it be satisfied the contract may be completed before the Master has made his report.

As to those contracts of which a specific performance has been refused:—

It is only where the party wants the thing *in specie* (i. e., the precise performance of the agreement), and where the legal remedy is inadequate or defective, that equity interferes.

A bill will not generally lie for a specific performance of contracts for chattels, or which relate to merchandise, as a bargain for corn or stock; for damages in these cases may, with equal advantage, be recovered in an action, and corn or stock bought; but where there were articles for the sale of 800 tons of iron, to be paid for by instalments, in a certain number of years; or where a man contracts for the purchase of a great quantity of timber, as a ship carpenter, by reason of the vicinity of the timber; or where a man, wanting to clear his land, agree to sell his timber, in order to apply the land to a particular sort of husbandry, or an agreement for the purchase of a debt; in all such instances, as nothing could answer the justice of the case but the performance of the contract *in specie*, a specific performance, it seems, would be decreed.

Common covenants in a lease will not be enforced in equity, there being a remedy at

law; nor an agreement or covenant to refer to arbitration; nor an agreement to purchase the business of an attorney; since, supposing such an agreement not illegal, equity has no means of carrying it into execution. *Boson v. Farlow*, 1 *Mer.* 459.

"*He that hath committed iniquity shall not have equity.*" is a wholesome equitable maxim, and, therefore, a party seeking equity must have done equity. A defendant to a bill for a specific performance of an agreement, is consequently allowed to resist it, by showing that the plaintiff is not entitled to relief, as by evincing that there has been an omission or mistake in the agreement, or that it is unconscientious, or unreasonable, or fraud, or surprise, or that there has been concealment, misrepresentation (whether wilful or not, latent or patent), or any unfairness (intoxication, for instance) attending it; and in these cases parol evidence of such circumstances of defence is permitted: for though parol evidence is inadmissible on the part of a plaintiff, to explain, add to, or vary a written contract (except in cases of fraud), it is admissible on the part of a defendant, to a bill for a specific performance, to show circumstances, *dehors*, independent of the writing, making it inequitable to interpose for the purpose of a specific performance; and even after decree for performance, great misrepresentations, alleged to have been only recently discovered, may be made the ground of a supplemental bill, in the nature of a bill of review. But misrepresentations of *obvious facts*, as that the premises were in good repair, when there was a want of painting, cracked ceilings, or broken palings, will not induce the court to refuse specific performance.

A party cannot call upon a court of equity for specific performance, unless he have shown himself *ready, desirous, prompt, and eager*.

If a party have failed to perform his part of an agreement, or if it have become impossible to perform it, he must seek any redress he may become entitled to at law, and cannot insist upon a specific performance; but if he have performed so much of his part of the agreement, that he cannot be put *in statu quo*, and he in no default for not performing the residue, or be prevented from completing it by the defendant's default, he is then entitled to have it specifically performed. *Maddock's Chan.*, tit. "*Specific Performance*;" 2 *Story's Eq. Jurisp.* 23.

SPEEDY JUDGMENT ACT, 1 *Wm. IV.*, c.

7. See JUDGMENT.

SPERATE, hoped to be not irrecoverable.

Spes est vigilantis somnium. 4 *Inst.* 203.—(Hope is the dream of the vigilant.)

Spes impunitatis continuum affectum tribuit delinquendi. 3 *Inst.* 236.—(The hope of impunity holds out a continual temptation to crime.)

Spoliatus debet ante omnia restitui. 2 *Inst.* 714.—(Spoil ought to be restored before any thing else.)

SPIGURNEL [*spicurrun*, Sax., to shut up or unclose], the sealer of the royal writs.

SPINSTER, an addition given to an unmarried woman.

SPIRITUAL CORPORATIONS, where the members are entirely spiritual persons and incorporated as such, for the furtherance of religion and perpetuating the rights of the church.

They are of two sorts :

(1.) *Sole*, as bishops, certain deans, parsons, and vicars, or

(2.) *Aggregate*, as deans and chapters, prior and convent, abbot and monk.

SPIRITUAL COURTS, ecclesiastical courts : which see.

SPIRITUAL LORDS, the archbishops and bishops of the House of Peers.

SPIRITUALITY, that which belongs to any one, as an ecclesiastic.

SPIRITUALTY, the clergy of England.

SPIRITUALTY OF BENEFICES, the tithes of land, &c.

SPITAL or **SPITTLE**, a charitable foundation ; a hospital for diseased people.

Sponsalia dicuntur futurarum nuptiarum conventio et repromissio. Co. Lit. 34.—(A betrothing is the agreement and promise of a future marriage.)

Sponsalia, inter minores contracta, ante septem annos, nulla sunt. Jenk. Cent. 95.—(Betrothings contracted between parties under seven years of age are void.)

Sponte virum fugiens mulier et adullera facta, Dote sua careat, nisi sponsi sponte retracta. Co. Lit. 37.—(A woman leaving her husband of her own accord, and committing adultery, loses her dower, unless her husband take her back of his own accord.)

SPOLIATION, a writ or suit for the fruits of a church or the church itself, to be sued in the spiritual and not in the temporal court, that lies for one incumbent against another where they both claim by one patron, and the right of patronage does not come in question. 3 Bl. Com. 90.

SPONSOR, a surety ; one who makes a promise or gives security for another.

SPONSIO JUDICIALIS, the feigned issue of the Romans.

SPONTE OBLATA, a free gift or present to the Crown.

SPORTULA or **SPORTELLA**, a dole or largess either of meat or money given by princes or great men to the poor people.

It was properly the pannier or basket in which the meat was brought, or with which the poor went to beg it, thence the word was transferred to the meat itself, and thence to money sometimes given in lieu of it. *Encyc. Lond.*

SPOUSAL, marriage nuptials.

SPOUSE-BREACH, adultery, as opposed to simple fornication.

SPREADING FALSE NEWS, a misdemeanor punishable at common law with fine and imprisonment.

SPRINGING USE, contingent use: which see.

SPULZIE [*spoliatio*], the taking away or

meddling with movables in another's possession, without the consent of the owner or authority of law. *Scotch Word.*

SPUNGING-HOUSE, a house to which debtors are taken before commitment to prison, where the bailiffs sponge upon them.

SQUIBS. The making, selling, and firing squibs and other fireworks, or throwing them about in any street, is, on account of the danger that may ensue to any thatched or timber buildings, declared to be a common nuisance by 9 & 10 Wm. III., cc. 7 & 8, punishable by fine, and may be prosecuted by indictment either on the statute or at common law.

SQUIRE, contraction of esquire : which see.

STABILIA, a writ called by that name, on a custom in Normandy, that where a man in power claimed lands in the possession of an inferior, he petitioned the prince that it might be put into his hands till the right was decided, whereupon he had this writ.

STABILITIO VENATIONIS, the driving deer to a stand.

Stabit presumptio donec probetur in contrarium. Hob. 297.—(A presumption will stand good till the contrary is proved.)

STABLESTAND, one of the four evidences or presumptions whereby a man is convicted to intend the stealing of the royal deer in the forest; and this is when a man is found at his standing in the forest with a cross-bow bent ready to shoot at any deer, or with a long bow, or else standing close by a tree with greyhounds in a leash ready to slip. *Cowell*

STADE, **STADIUM**, a furlong.

STAFF-HERDING, the following of cattle within a forest.

STAGE-COACHES. The provisions relative to these will be found embodied in 2 & 3 Wm. IV., c. 80, amended by 3 & 4 Wm. IV., c. 48; 2 & 3 Vict., c. 66; and 5 & 6 Vict., c. 79.

STAGIARIUS, a resident.

STALE-CHECK, an ante-dated check.

STALKING, the going gently, step by step, under cover of a horse, &c., to take game.

STALLAGE, the liberty or right of pitching, or erecting stalls in fairs or markets, or the money paid for the same.

STALLARIUS, a master of the horse; also, the owner of a stall in a market. *Spelm.*

STAMP-DUTIES, a branch of the perpetual revenue. They are a tax imposed upon all parchment and paper whereon many legal proceedings or private instruments are written; and also upon licences for retailing wines, letting horses to hire, and numerous other purposes; and upon all newspapers, advertisements, dice, &c. 48 Geo. III., c. 149; 55 Geo. III., c. 184; 1 & 2 Geo. IV., c. 55; 3 Geo. IV., c. 117; 1 & 2 Vict., c. 85; 7 & 8 Vict., c. 21.

STANDARD, that which is of undoubted authority, and the test of other things of the same kind; a settled rate.

STANDING MUTE. See **MUTTS**.

STANNARY [*stannum*, Lat., *stéan*, Cornish, tin], a tin mine.

There are stannary courts in Devonshire and Cornwall for the administration of jus-

tice among the tinnerns therein. They are courts of record of the same limited and exclusive nature as those of the counties palatine. They are held before the lord warden and his substitutes, in virtue of a privilege granted to the workers in the tin mines there, to sue and be sued only in their own courts, that they may not be drawn from their business, which is highly profitable to the public, by allowing their law suits in other courts. No writ of error can be brought, but an appeal lies from the steward of the court to the under-warden, and from him to the lord-warden, and thence to the privy council of the Prince of Wales as Duke of Cornwall, when he has had livery or investiture of the same, and thence to the Queen in the last resort. 3 *Step. Com.* 448.

STAPLE [*stapel*, Belg. & Sueth.], a settled mart; an established emporium; that which is established in commerce, according to its laws.

STAR [*starrum*, contr. from *shetar*, Heb., a deed or contract], the deeds, obligations, &c., of the Jews; also, a schedule or inventory.

STAR CHAMBER [*chambre des estoylles*], *camera stellata*: which see.

STARE DECISIS, to rely upon authorities or cases already adjudicated upon.

STATICS [*στατική*, Gk., *statique*, Fr.], the science which considers the weight of bodies.

STATIONERS' HALL. The 5 & 6 Vict., c. 45, authorizes, in every case of copyright, the registration of the title of the proprietor at Stationers' Hall, and provides that, without previous registration, no action shall be commenced, though an omission to register is not otherwise to affect the copyright itself.

STATIONARIUS, *stagiarius*: which see.

STATISM, policy, the arts of government.

STATIST, a statesman, a politician, one skilled in government.

STATISTIC, or **STATISTICAL**, political.

STATISTICS, that part of political science which regards the population, buildings, agricultural and manufactured productions, revenue, &c.

It has been observed that neither the derivation of this word, the meanings of its collaterals (of *statist* especially), nor the wants of our language, which has no word comprehending the whole of political science, warrant this restriction. *Encyc. Lond.*

STATUS DE MANERIO, the assembly of the tenants in the court of the lord of a manor, in order to do their customary suit.

Statuta pro publico commodo latè interpretantur. Jenk. Cent. 21.—(Statutes made for the public good ought to be liberally construed.)

STATUTABLE, according to statute.

STATUTABLY, in a manner agreeable to law.

STATUTE, a law, an edict of the legislature, an act of Parliament. See **ACT OF PARLIAMENT**.

The civilians have divided statutes into three classes: personal, real, and mixed. By statutes they mean, not the positive legislation, which in England is known as the

acts of Parliament, as contra-distinguished from the common law; but the whole municipal law of a particular state, from whatever source arising. Sometimes the word is used by them in contra-distinction to the imperial Roman law, which they are accustomed to style, by way of eminence, the common law, since it constitutes the general basis of the jurisprudence of all continental Europe, modified and restrained by local customs and usages, and positive legislation.

STATUTE-MERCHANT, a bond of record acknowledged before the clerk of the statutes-merchant, and Lord Mayor of the city of London, or two merchants assigned for that purpose; and before the mayors of other cities and towns, or the bailiff of any borough, &c., sealed with the seal of the debtor and the king, upon condition that if the obligor pay not the debt at the day, execution may be awarded against his body, lands, and goods; and the obligee shall hold the lands to him, his heirs, and assigns, till the debt is levied. It is fallen into disuse. 1 *Step. Com.* 285.

STATUTE-STAPLE, a bond of record acknowledged before the mayor of the staple, in the presence of all or one of the constables, to the end, there shall be a seal ordained which shall be affixed to all obligations made on such recognizance acknowledged in the staple. 2 *Roll. Abr.* 466; 4 *Inst.* 238. It has grown obsolete.

STATUTO MERCATORIO, an ancient writ for imprisoning him who had forfeited a statute-merchant bond, until the debt were satisfied. *Reg. Orig.* 146.

STATUTORY, enacted by statute.

STATUTO STAPULÆ, the ancient writ that lay to take the body to prison, and seize upon the lands and goods of one who had forfeited the bond called statute staple. *Reg. Orig.* 151.

Statutum affirmativum non derogat communi legi. Jenk. Cent. 24.—(An affirmative statute does not take from the common law.)

Statutum ex gratia regis dicitur, quando rex dignatur cedere de jure suo regio, pro comodo et quiete populi sui. 2 *Inst.* 378.—(A statute is said to be by the grace of the king, when the king deigns to yield some portion of his royal rights for the good and quietness of his people.)

Statutum generaliter est intelligendum quando verba statuti sunt specialia, ratio autem generalis. 10 Co. 101.—(When the words of a statute are special, but the reason of it general, it is to be understood generally.)

STATUTUM SESSIONUM (the statute sessions), a meeting in every hundred of constables and householders, by custom, for the ordering of servants, and debating of differences between master and servants, rating of wages, &c. 5 *Eliz.*, c. 4.

Statutum speciale statuto speciali non derogat. Jenk. Cent. 199.—(One special statute does not take from another special statute.)

STEALING. See **LARCENY**.

STEALING CHILDREN. See **KIDNAPPING**.

STEALING AN HEIRESS. See **ABDUCTION.**

STEAM ENGINES. As to the negligent use of these, see 1 & 2 Geo. IV., c. 41.

STEEL-BOW GOODS, corn, cattle, straw, and implements of husbandry, let or delivered by a landlord to a tenant, by which the tenant is enabled to stock and work a farm; in consideration of which he becomes bound to return articles, equal in quantity and quality, at the expiration of the lease. *Scotch Phrase.*

STELLIONATE [*stellionatus*], a kind of crime which is committed by a deceitful selling of a thing otherwise than it really is; as if a man should sell that for his own estate which is actually another man's.

In the Roman law, the making a second mortgage without giving notice of the first; but the crime was not committed if the land were equal in value to all the sums charged upon it. *Dig.* 13.

STERBRECHÉ, STREBRICH, the breaking, obstructing, or straitening of a way. *Termes de Ley.*

STERLING, genuine; having passed the test; money; standard rate. See **EASTERLING.**

STET PROCESSUS, an order of the court to stay proceedings, and, strictly, it can only be made with the consent of the parties; but where the ends of justice will be better answered by this course, it is authoritatively recommended by the court. Each party pays his own costs.

STEUART, the Queen's sheriff within the proper lands of the Crown. *Scotch Phrase.*

STEWARD [*seneschallus*], an officer of chief account within his jurisdiction. See **HIGH STEWARD.**

STEWARD OF THE HOUSEHOLD. See **MARSHALSEA.**

STEWs, places anciently permitted in England to women of professed incontinency.

STICKLER, an inferior officer who cuts wood within the royal parks of Clarendon; an arbitrator; an obstinate contender about anything.

STILLICIDIUM, the water that falls from the roof of a house in scattered drops.

STINT, *common without*; common *sans nombre*, i. e., without number.

STIPEND, a salary, settled pay; a provision made for the support of the clergy.

As to the payment of curates, see 1 & 2 Vict., c. 106.

STIPENDIUM, from *stipem* and *pendo*, because before silver was coined at Rome, the copper money in use was paid by weight, and not by scale.

STIPULATED DAMAGE, liquidated damage: which see.

STIPULATION, bargain; also, a recognition of certain fidejussors in the nature of bail, taken in the admiralty courts.

STIREMANNUS, a pilot or steersman. *Domesday.*

STIRPEN. See **PER STIRPEN.**

STOCK, a race, lineage, or family.

STOCKBROKER, one who deals in stocks or the public funds. See **BROKER.**

STOCKJOBING, the act of buying and selling stock in the public funds for the turn of the scale, or on speculation. It is unlawful. 7 Geo. II., c. 4; 10 Geo. II., c. 8.

STOCKS, prison for the legs. See **FUNDS.**

STOPPAGE IN TRANSITU, when goods are consigned on credit from one merchant to another, it sometimes happens that the consignee becomes a bankrupt or insolvent, while the goods are on their way to him, and before they are delivered. In such case, as it would be hard that the goods of the consignor should be applied in payment of the debts of the consignee, the former is allowed to resume possession of them, if he can succeed in doing so while they are on their way. It does not rescind the sale, but is an equitable lien, adopted by the law for the purpose of substantial justice. *Gibson v. Carruthers*, 8 M. & W. 336.

STORES, the supplies of different articles provided for the subsistence and accommodation of the ship's crew and passengers.

It is laid down, in general, that the surplus stores of every ship arriving from parts beyond seas are to be subject to the same duties and regulations as those which affect similar commodities when imported as merchandise; but if it shall appear to the collector and comptroller that the quantity of such stores is not excessive, nor unsuitable, under all the circumstances of the voyage, they may be entered for the private use of the master, purser, or owner of such ship, on payment of the proper duties, or be warehoused for the future use of such ship, although the same could not be legally imported by way of merchandise. 3 & 4 Wm. IV., c. 52, § 35.

STOW [Sax.], a place.

STOWAGE, money paid for a room where goods are laid; housage.

STRANDING, the running of a ship on shore or on a beach.

It is the invariable practice to subjoin the following memorandum to policies of insurance executed by private individuals in this country:—"N.B. Corn, fish, salt, fruit, flour, and seed, are warranted free from average, unless general, or the ship be stranded; sugar, tobacco, hemp, flax, hides, and skins, are warranted free from average under 5l. per cent., and all other goods, also the ship and freight, are warranted free of averages under 3l. per cent., unless general, or the ship be stranded."

It is, therefore, of the greatest importance accurately to define what shall be deemed a stranding. But this is no easy matter; and much diversity of opinion has been entertained with respect to it. It would, however, appear that merely striking against a rock, bank, or shore, is not a stranding, and that to constitute it, the ship must be upon the rock, &c., for some time. Mr. Justice *Park* has the following observations on this subject:—"It is not every touching or striking upon a fixed body in the sea or river that will constitute a stranding. Thus, Lord *Ellenborough* held that, in order to establish a stranding,

the ship must be *stationary*; for that merely striking on a rock and remaining there a short time (as in the case then at the bar, about a minute and a half), and then passing on, though the vessel may have received some injury, is not a stranding. Lord *Ellenborough's* language is important. *Ex vi termini*, stranding means lying on the shore, or something analogous to that. To use a vulgar phrase, which has been applied to this subject, if it be *touch and go* with the ship, there is no stranding. It cannot be enough that the ship lie for a few minutes on her beam ends. Every striking must necessarily produce a retardation of the ship's motion. If by the force of the elements she is run aground, and becomes stationary, it is immaterial whether this be upon piles, or the muddy bank of a river, or on rocks or the sea shore, but a mere striking will not do, wherever that may happen. I cannot look to the consequences without considering the *causa causans*. There has been a curiosity in the cases about stranding not creditable to the law. A little common sense may dispose of them more satisfactorily." *McCulloch's Com. Dict.*

STRATOCRACY [*στρατος*, Gk., an army, and *κράτος*, power], a military government.

STRATOR or **STRETWARD**, a surveyor of the highways.

STRICT SETTLEMENT, where land is settled to the parent for life, and after his death to his first and other sons in tail, and trustees are interposed to preserve the contingent remainders.

STRUMPET [*meretrix*], a whore, harlot, or courtesan. This word was anciently used for an addition; it occurs to the name of a woman in a return made by a jury in the sixth year of King Henry the Fifth.

STUPRATION [*stupro*, Lat.], rape, violation.

STURGEON, a royal fish, which when either thrown ashore or caught near the coast, is the property of the sovereign.

STURGES BOURNE'S ACT, the Select Vestry Act, 59 Geo. III., c. 12, by which the inhabitants of any parish in vestry assembled, were enabled to commit the management of its poor to a committee of the parishioners appointed for that purpose, and called a select vestry, to whose orders the overseers are bound to conform.

STYLE, to call, name, or entitle one.

STYLE OF COURT, the practice observed by a court in its way of proceeding.

SUBINFEUDATION, where the inferior lords, in imitation of their superiors, began to carve out and grant to others minuter estates than their own, to be held of themselves, and were so proceeding downwards *in infinitum* till stopped by legislative provisions. See **TENURE**.

SUBJECTS, the members of a commonwealth under a Sovereign.

Sublatâ causâ tollitur effectus. Ibid. 303.—(Remove the cause, the effect ceases.)

Sublatâ veneratione magistratuum, respublica ruit. Jenk. Cent. 43.—(The commonwealth

perishes, if respect for the magistrates be taken away.)

Sublato fundamento cadit opus. Jenk. Cent. 106.—(Remove the foundation, the superstructure falls.)

Sublato principali tollitur adjunctum. Co. Lit. 389.—(If the principal is taken away, its adjunct is also taken away.)

SUBLEGERIUS [*sybleger*, Sax.], one who is guilty of incestuous whoredom.

SUBMARSHAL, the under marshal in the marshalsea.

SUBMISSION TO ARBITRATION. See **ARBITRATION**.

SUB MODO (under measure or condition).

SUBNERVARE, to ham-string by cutting the sinews of the legs and thighs.

It was an old custom *meretrices et impudicas mulieres subnervare*.

Sub nomine mulieris continetur quælibet fœmina. *Propriè sub nomine mulieris, continetur virgo; appellatione mulieris in legibus Angliæ continetur uxor; et sic filius natus vel filia nata ex justa uxore appellatur in legibus Angliæ, filius mulieratus, seu filia mulierata*. Co. Lit. 243.—(Under the word *mulier* (a woman), *fœmina* (a woman not a maid) is sometimes meant. Sometimes *virgo* (a maid) is meant; and the word *mulier* in the English law also comprehends *uxor* (a wife). Thus, a son or daughter, born in lawful wedlock, is called, by the laws of England, *filius mulieratus* (a son born of a married woman), or *filia mulieratus* (a daughter born of a married woman).)

Subornare est quasi subtilis in aure ipsum male ornare, unde subornatio dicitur de falsi expressione, aut de veri suppressione. 3 Inst. 167.—(To suborn is as it were to adorn subtly to the ear what is bad; whence, to express what is false, or suppress what is true, is called subornation.)

SUBORNATION, the crime of procuring another to do a bad action.

SUBPCENA [*sub*, Lat., under, and *pœna*, penalty], a writ commanding attendance in a court under a penalty. It bears a close analogy to the citation, or *vocatio in jus* of the civil and canon laws.

There are several kinds, and at common law there are two to compel the attendance of witnesses:—

1. *Subpœna ad testificandum*, the common *subpœna*, which is personally served upon a witness, in order to compel him to attend the trial or enquiry, to give evidence.

2. *Subpœna duces tecum*, this is personally served upon a person, who has in his possession any written instrument, &c., which would be evidence.

These subpœnas are also used in criminal proceedings; four witnesses can be included in one subpœna, whether in civil or criminal cases.

There are several *subpœnas* used in the course of a *Chancery* suit, but only three names can be included in one writ, husband and wife counting as one. They are the following:—

1. *Subpœna* to appear and answer the bill.
2. *Subpœna* to answer amended bill.
3. *Subpœna ad testificandum*.
4. *Subpœna duces tecum*.
5. *Subpœna* to hear judgment.
6. *Subpœna* for costs.
7. *Subpœna* served upon an infant on attaining majority, to give him an opportunity to shew cause against a decree.

The 93d order of 8th May, 1845, abolished the *subpœna* to rejoin.

SUBREPTION, the obtaining a gift from the Crown, by concealing what is true.

Subsequens matrimonium tollit peccatum præcedens. Reg. Jur. Civ.—(A subsequent marriage removes the previous criminality).

SUBSEQUENT CONDITION. See **CONDITION SUBSEQUENT**.

SUBSIDY, an aid, tax, or tribute granted to the Crown for the urgent occasions of the kingdom, to be levied on every subject of ability, according to the value of his lands or goods.

SUBSTITUTION, one placed under another to transact some business, &c.

In the Scotch law, the enumeration or designation of the heirs in a settlement of property, and substitutes in an entail, are those heirs who are appointed in succession on failure of others.

SUBTRACTION, neglecting or withdrawing to perform any suit, service, custom, or duty.

SUBURBANI, husbandmen.

SUCCESSION, the power or right of coming to the inheritance of ancestors. See **CANNONS OF INHERITANCE**, **DISTRIBUTION**.

SUCCESSOR, one that follows in the place or situation of another.

Succurritur minori: facilis est lapsus juventutis. Jenk. Cent. 47.—(A minor is to be assisted: a mistake of youth is easy.)

SUCKEN, the whole lands astricted to a mill, the tenants of which are bound to grind there.

SUE, to prosecute by law, to gain by legal procedure.

SUFFERANCE, *tenancy at*, the lowest estate that can subsist. It arises where a person has held by a lawful title, and continues his possession after his title is determined, without either the agreement or disagreement of the person then entitled to it. As where a tenant at will continues in possession after the death of the lessor; or a lessee for years holds over after the expiration of the term; or a tenant for another man's life keeps possession after the decease of the person for whose life he held; in all these cases, the tenant remaining in possession, without the consent or dissent of the person entitled, becomes tenant at sufferance to the latter. This tenancy, therefore, can arise only by construction of law, and cannot originate in the agreement of the parties, the law presuming only that the possession is continued by the permission of the person entitled to

it. *Walk. Conv.*, tit. "*Tenancy by Sufferance*."

SUFFERENTIA PACIS, a grant or sufferance of peace or truce.

SUFFRAGAN. Bishops are styled *suffragan* in respect of their relation to the archbishop of their province. But formerly each archbishop and bishop had also his suffragan to assist him in conferring orders, and in other spiritual parts of his office within his diocese. These are called *suffragan bishops*, and resemble the *chorepiscopi*, or bishops of the country in the early times of the Christian church. How this inferior order of bishops may be elected and consecrated is regulated by 26 Hen. VIII., c. 14; but notwithstanding this statute, it is not usual to appoint them. This should not be confounded with the *coadjutors* of a bishop, the latter being appointed in case of a bishop's infirmity to superintend his jurisdiction and temporalities, neither of which was within the interference of the former. 3 *Step. Com.* 63.

SUFFRAGE [*suffragium*, the etymology is uncertain, for the opinions of those who connect it with *φράσσειν*, or *fragor*, do not deserve notice. Wunder thinks that it may possibly be allied with *suffrage*, and signified originally an ankle-bone or knuckle bone], vote; voice given in a controverted point; aid, assistance.

SUGGESTIO FALSI, the representation of untruth; one of the great branches of fraud. See **FRAUD**.

SUGGESTION, a surmise or representing of a thing.

SUICIDE, self-slaughter.

Suicides may be divided into two classes, founded upon the different causes or circumstances by which they are actuated. The first includes those who have deliberately committed the act from the force of moral motives alone; the second, those who have been affected with some pathological condition of the brain, excited or not by moral motives.

That suicide is often committed under the impulse of mental derangement, even when mental derangement would not otherwise have been suspected, is a doctrine that was long since taught by some mental writers, and has been confirmed beyond the shadow of a doubt by the researches of mental inquirers.

The suicidal propensity is generally attributed to pathological causes; but there is a large class of cases in which no insanity of mind or body has been observed or suspected, though we have good reason to suspect its existence. Within a few years past, the attention of the medical profession has been directed to this subject; and their researches have abundantly established the fact, that the efficient cause is some pathological change, or physical peculiarity, not in every case easily defined or understood, but none the less certain on that account.

Among the features which ally the pro-

propensity to suicide to ordinary mania, is that of its hereditary disposition. Dr. Gall knew several families in which the suicidal propensity prevailed through several generations. Fabret, whose researches have thrown much light on this affection, believes that it is more disposed to be hereditary than any other kind of insanity.

Another trait which the suicidal propensity possesses in common with some nervous diseases, though not insanity, is its disposition to prevail epidemically, as it were, in consequence of that law of our constitution, not well understood, called sympathy. It is a matter of common observation, that the occurrence of one case of suicide is followed, oftener than not, by one or more in the same community. It is related that thirteen hundred people destroyed themselves in Versailles in 1793; and that in one year, 1506, sixty perished by their own hands in Rouen. *Burrow's Comm. on Insanity*, 438.

By the common law, a *felo de se* forfeited all chattels real or personal, which he had in his own right, and various other property, and his will became void as to personal property. Such severity has been generally avoided, by the almost universal practice of coroners' juries returning an inquest of insanity. The principle adopted in the ecclesiastical court is, that in cases of doubtful sanity—among which those of suicide must always be ranged—the validity of the individual's testament must be determined solely by the character of that instrument itself.

In *Burrows v. Burrows*, 1 Hagg. E. R. 109, it was held by Sir John Nicholl, that where there was no evidence of insanity at the time of giving instructions for a will, the commission of suicide three days afterwards did not invalidate the will, by raising an inference of previous derangement. In *Brookes v. Burrell*, 7 Pick. 91, C. J. Parker held that suicide, committed fifteen days after the date of the person's will, was not sufficient, in the absence of other evidence, to prove him insane, and thus invalidate the will, on account of the difficulty of ascertaining with precision the very inception of derangement, which weakens its force in relation to any antecedent act. *Ray's Med. Jurisp. of Insanity*, 335; *Reck's Med. Jurisp.* 561.

Suicide works a forfeiture and a deprivation of Christian burial. 4 *Geo. IV.*, c. 52, § 1.

SUIT, a following. It is used in divers senses:

(1) An action at law, or proceeding by bill in Chancery; a prosecution.

(2) *Suit of court*, an attendance which a tenant owes to his lord's court.

(3) *Suit covenant*, when one has covenanted to do suit and service in his lord's court.

(4) *Suit custom*, where service is owed time out of mind.

(5) The following one in chase on fresh suit.

(6) A petition to a court, &c.

SUIT-SILVER, a small rent or sum of money

paid in some manors to excuse the freeholders' appearance at the courts of their lord.

SUITER or SUITOR, one that sues, a petitioner, a suppliant, a wooer.

SUITRESS, a female supplicant.

SULH ÆELMYSSAN, plough-alms. *Anc. Inst. Eng.*

SULLERY, a plough-land. 1 *Inst.* 5.

SUMAGE, toll for carriage on horseback.

Summa charitas est facere justitiam singulis et omni tempore quando necesse fuerit. 11 Co. 70.—(The greatest charity is to do justice to individuals, and at any time, whenever it might be necessary.)

Summa ratio [lex] est, quæ pro religione facit. 5 Co. 14.—(The highest law is that which supports religion.)

SUMMARY, an abridgment, brief, compendium, a short application to a court or Judge, without the formality of a full proceeding. See PLENARY.

SUMMIST, one who forms an abridgement.

SUMMER-HUS SILVER, a payment to the lords of the wood on the Wealds of Kent, who used to visit those places in summer, when their under-tenants were bound to prepare little summer houses for their reception, or else pay a composition in money. *Custom de Sittingburn, MS.*

SUMMONEAS, a writ judicial of great diversity, according to the divers cases wherein it is used.

SUMMONERS, petty officers who cite and warn persons to appear in any court. *Fleta*, l. ix.

SUMMONITORES SCACCARII, officers who assisted in collecting the revenues by citing the defaulters therein into the Court of Exchequer.

SUMMONS [from the writ called *summoneas*. *Pegge's Anecd. of the Engl. Lung.*, 2d edit., 173], a call of authority, admonition to appear in a court, a citation. See PERSONAL ACTION.

Summum jus, summa injuria. Summa lex, summa crux. Hob. 125.—(The higher the law, the greater the injury. The higher the law, the higher the punishment.)

SUMPTUARY LAWS, those in restraint of luxury, excess in apparel, &c.; they are all repealed by 1 Jac. I., c. 25.

SUNDAY [*sunnan dag*, Sax., the day of the sun], the first day of the week, the sabbath, the Lord's Day, set apart for the service of God, to be kept religiously, and not to be profaned. It is a *dies non juridicus*, but an arrest for crime can be effected on this day; and bail can arrest their principal, and a serjeant-at-arms can apprehend; but no other law proceedings can be taken on this day.

SUPERCARGO, an officer in a ship, whose business is to manage the trade.

Super fidem chartarum, mortuis testibus, erit ad patriam de necessitate recurrendum. Co. Lit. 6.—(The truth of charters is necessarily to be referred to a jury, when the witnesses are dead.)

SUPERFOETATION, the conception of a second embryo during the gestation of the first. Its bearing in legal medicine is on the question of legitimacy.

Should the doctrine of superfoetation ever be pleaded in medico-legal cases, we must be guided by the laws of legitimacy, both as to premature and protracted births. The latest born should fall within the legal term, or be excluded from the privileges attendant on it; and this is more particularly necessary, from the obscurity that invests the subject. *Beck's Med. Jurisp.* 158.

Superflua non nocent. Jenk. Cent. 184. — (Superfluities hurt not.)

SUPER-INSTITUTION, one instituted upon another: as where A. is admitted and instituted to a benefice upon one title, and B. is admitted and instituted on the title or presentment of another. 2 *Cro.* 463.

SUPERINTENDENTS OF THE CHINA TRADE. By 3 & 4 Wm. IV., c. 93, the Crown has authority to appoint three officers called *superintendents*, to whom was to be committed the regulation of British trade and commerce to and from this country; and to create a court of justice, with criminal and admiralty jurisdiction for the trial of offences committed by the subjects of the realm in China. Since this act, we have acquired the island of Hong Kong, and established a legislative council there; and appointed as governor of the island the officer invested with the office of chief superintendent; and it was enacted by 6 & 7 Vict., c. 80, that it should be lawful for her Majesty by commission to authorise such superintendent, so long as he should be also governor of Hong Kong, to enact, with the advice of the said legislative council, all such laws as might be necessary for the good government of British subjects in China, or within any ship not more than 100 miles from China; and to enforce the execution of such laws by pains and penalties. The same power is also given to her Majesty in council. And see 6 & 7 Vict., c. 84.

SUPERIOR, the grantor of a feudal right to be held of himself.

SUPERIOR COURTS, the Courts of Chancery, Queen's Bench, Common Pleas, and Exchequer, at Westminster. See these courts treated of under the proper titles.

SUPER-JURARE, anciently when a criminal endeavoured to excuse himself by his own oath, or the oath of one or two witnesses, and the crime objected against him was so plain and notorious that he was convicted on the oaths of many more witnesses.

SUPERONERATIONE PASTURÆ, a judicial writ that lies against him who is impleaded in the county court for the surcharge of a common with his cattle, in a case where he was formerly impleaded for it in the same court, and the cause was removed into one of the superior courts.

SUPER PRÆROGATIVA REGIS, a writ which formerly lay against the King's tenant's widow for marrying without the royal license. *F. N. B.* 174.

SUPERSEDEAS, a writ that lies in a great many cases; and signifies in general a command to stay some ordinary proceedings, on good cause shewn, which ought otherwise to proceed. *F. N. B.* 236.

SUPERSEDERE, a private agreement among creditors to supersede proceedings against the person of a bankrupt or other debtor. *Scotch Word.*

SUPER STATUTO, 1 Edw. III., c. 12, a writ that lay against the King's tenant holding in chief, who aliened the King's land without his licence.

SUPER STATUTO DE ARTICULIS CLERICI, a writ which lay against a sheriff or other officers, who distrained in the King's highway, or on the lands anciently belonging to the church.

SUPER STATUTO FACTO POUR SENESCHAL ET MARSHAL DE ROY, &c., a writ which lay against a steward or marshal for holding plea in his court, or for trespass or contracts not made, and arising within the King's household.

SUPER STATUTO VERSUS SERVANTES ET LABORATOIRES, a writ which lay against him who keeps any servants departed out of the service of another contrary to law.

SUPERSTITIOUS USES. See **CHARITIES.**

SUPERVISOR, a surveyor or overseer.

SUPPLEMENTAL BILL, an addition to an original bill in equity, in order to supply some defect in its original frame and structure.

A supplemental bill, strictly so called, is proper whenever the imperfection in the original bill arises from the omission of some material fact which existed before the filing of the bill, or from the omission of a party, but the time is passed in which it can be introduced by amendment, as after issue and examination of witnesses. Also, when new events or new matters have occurred since the filing of the bill, the proper mode is to add them by supplement.

By Order 49 of 26th August, 1841, it is ordered, "That it shall not be necessary in any bill of revivor or supplemental bill, to set forth any of the statements in the pleadings in the original suit, unless the special circumstances of the case may require it."

SUPPLEMENTAL BILL, *bill in the nature of a.* This bill and the above named bill are usually confounded together; but the prominent distinction between them seems to be, that a supplemental bill is properly applicable to such cases only where the same parties and the same interests remain before the court; whereas, an original bill, in the nature of a supplemental bill, is properly applicable, when new parties with new interests, arising from events since the institution of the suit, are brought before the court. *Story's Eq. Plead.* 265.

SUPPLEMENT, *letters of*, where a party is sued before an inferior court, and does not reside within its jurisdiction, these letters are obtained on a warrant from the Court of Session, and in these the party may be cited

to appear before the inferior Judge. *Scotch Law.*

SUPPLETORY OATH, the oath of a litigant party in the spiritual courts.

SUPPLICAVIT, a writ issuing out of Chancery for taking surety of the peace, upon articles filed on oath, when one is in danger of being hurt in his body by another; it is addressed to the justices of the peace and sheriff of the county, and is grounded upon the 1 Edw. III., st. 2, c. 16, which ordains that certain persons shall be appointed by the Chancellor to take care of the peace, &c. *F. N. B.* 80.

This writ is seldom used, for when application is made to the superior courts, they usually take the recognizances there, under the 21 Jac. I., c. 8.

SUPPLIES, aids, subsidies, taxes.

SUPPLY, *commissioners of*, persons appointed to levy the land tax in Scotland.

SUPPRESSIO VERI (a suppression of truth), one of the classes of fraud.

SUPRA PROTEST (above protest). See **ACCEPTANCE**.

SUPREMACY, sovereign dominion, authority, and pre-eminence.

SUPREMACY, *oath of*, taken by all public officers, &c., whereby they swear to uphold the supreme power of the kingdom in the person of the reigning sovereign.

Suprema potestas seipsam dissolvere potest.

Bacon.—(Supreme power can dissolve itself.)

SURCHARGE, an overcharge of what is just and right.

SURCHARGE AND FALSIFY, a mode of taking accounts in Chancery.

A surcharge is applied to the balance of the whole account, and supposes credits to be omitted which ought to be allowed. A falsification applies to some item in the debits, and supposes that the item is wholly false or in some part erroneous. *2 Ves.* 265.

SUR CUI IN VITA. See **CUI IN VITA**.

SUR DISCLAIMER, *writ of right of*, abolished by 3 & 4 Wm. IV., c. 27.

SURETY, hostage, bondsman, one that gives security for another, one that is bound for another. See **SECURITY**.

SURGEON [corrupted from *chirurgæon*], one who practises the healing art.

The Royal College of Surgeons in England was incorporated by 7 Vict., 14th Sept.

SURNAME [*surnom*, Fr. It is a great dispute whether we should write *surname* or *sirname*; on the one hand there are a thousand instances in court rolls and other ancient muniments, where the description of the person is written *over* the christian name, this only being inserted in the line; and the French always write *surnom*. There is, however, no impropriety to say *sirname*, since these additions are so apparently taken from our *sires* or fathers], the family name; the name over and above the christian name. *Encyc. Lond.*

SURPLICE FEES, fees payable on baptisms, funerals, marriages, &c.; Easter offerings, mortuaries, &c.

Surplusagium non nocet. 9 H. 626.—(Surplusage hurts not.)

SURPLUS, SURPLUSAGE, a supernumerary part, overplus, what remains when everything is satisfied.

SURREBUTTER, the replication or answer of the plaintiff to the defendant's rebutter.

SURREJOINER, a second defence, as the replication is the first of the plaintiff's declaration, and is an answer to the defendant's rejoinder.

SURRENDER, a yielding up, or resigning; a submission to authority.

A surrender is the yielding up or returning, or relinquishing of a smaller estate to him that has a greater estate in the same lands, in remainder or reversion, usually expectant upon such smaller estate. It differs from a release in that the smaller estate is conveyed to the greater, and for this purpose every estate in reversion is considered greater than the particular estate in possession, whereas in a release the greater estate is conveyed to the less. There is a surrender in law as well as by agreement of the parties. *1 Step. Com.* 483; *Watk. Conv.* 323.

SURRENDER OF COPYHOLDS, the yielding up of the estate by the tenant into the lord's hands, for such purpose as is expressed in such surrender. It is the mode of conveying copyholds.

SURRENDER OF FUGITIVES. Penal laws of foreign countries are strictly local, and affect nothing more than they can reach, and can be seized by virtue of their authority. A fugitive who passes hither, comes with all his transitory rights. He may recover money held for his use, and stock, obligations, and the like; and cannot be affected in this country by proceedings against him in that which he has left, beyond the limits of which such proceedings do not extend. *Per Lord Loughborough, Folliott v. Ogden*, 1 H. Bl. 135. Mr. Justice Buller, in the same case (3 T. R. 733), on a writ of error, said:—"It is a general principle, that the penal laws of one country cannot be taken notice of in another." The same doctrine was affirmed by Lord Ellenborough in a subsequent case, *Wolff v. Oxholm*, 6 M. & Selw. 99. And it has been promulgated by Lord Brougham, in very clear and authoritative terms:—"The *lex loci* must needs govern all criminal jurisdiction, from the nature of the thing and the purpose of the jurisdiction." *Warrender v. Warrender*, 9 Bligh, 119.

The same doctrine is stated by Lord Kaims as to the doctrine in Scotland:—"There is not," says he, "the same necessity for an extraordinary jurisdiction to punish foreign delinquencies. The proper place for punishment is where the crime is committed. And no society takes concern in any crime but what is hurtful to itself." *Kaims on Equity*, b. 3, c. 8.

Pardessus has affirmed a similar principle:—"In all the states of Christendom," says he, "by a sort of general consent and uni-

formity of practice, the prosecution and punishment of penal offences are left to the tribunals of the country where they are committed. The principle of the French legislation, that the laws of police and bail are obligatory upon all who are within the territory, is a principle of common right in all nations." *Droit Com.* 5 art. 1467.

There is another point which has been a good deal discussed of late; and that is, whether a nation is bound to surrender up fugitives from justice who escape into its territories, and seek there an asylum from punishment. The practice has, beyond question, prevailed as a matter of comity, and sometimes of treaty, between some neighbouring states, and sometimes also between distant states having much intercourse with each other. Paul Voet remarks, that, under the Roman empire, this right of having a criminal remitted for trial to the proper *forum criminis*, was unquestionable. But he remarks, that, according to the customs of almost all Christendom (except Saxony), the remitter of criminals, except in cases of humanity, is not admitted; and when done, it is to be upon letters rogatory, so that there may be no prejudice to the local jurisdiction. As quoted by *Story, Conf. of Laws*, 878.

It has, however, been treated by other distinguished jurists as a strict right, and as constituting a part of the law and usage of nations, that offenders charged with a high crime, who have fled from the country in which the crime has been committed, should be delivered up and sent back for trial by the sovereign of the country where they are found. Vattel manifestly contemplates the subject in this latter view, contending that it is the duty of the government where the criminal is, to deliver him up, or to punish him: and if it refuse so to do, then it becomes responsible, as, in some measure, an accomplice in the crime. This opinion is also maintained with great vigour by Grotius, by Heineccius, by Burlemaqui, and by Rutherford. There is no inconsiderable weight of common law authority on the same side; and Mr. Chancellor Kent has adopted the doctrine in a case which called directly for its decision.

On the other hand, Puffendorf explicitly denies it as a matter of right; Martens is manifestly of the same opinion, contending that with respect to crimes committed out of his territories, no sovereign is obliged to punish the criminal who seeks shelter in his dominions, or to execute a sentence pronounced against his person or his property. Lord Coke expressly maintains, that the sovereign is not bound to surrender up fugitive criminals from other countries who have sought a shelter in his dominions. Consult *Story's Conf. of Laws*, 874.

SURROGATE, one that is substituted or appointed in the room of another, as by a bishop, chancellor, Judge, &c.

SURSISE, to forbear or neglect. *Bract.* l. 5.

SURSUMREDDITIO, a surrender, a red-dition.

SURVEYOR, one who has the overseeing or care of some person's lands or works. See **HIGHWAYS**.

A court of surveyors was erected by 33 Hen. VIII., c. 39, for the benefit of the Crown.

SURVIVORSHIP, the outliving by one of two or more joint-tenants, &c.

SUSPENSE, SUSPENSION, a temporal stop or hanging up as it were of a man's right for a time; also a censure on ecclesiastical persons, during which they are forbidden to exercise their offices, or take the profits of their benefices.

SUSPENSION, *pleas in*, those which show some matter of temporary incapacity to proceed with the action or suit.

SUS. PER COLL. On the trial of criminals, the usage is for the Judge to sign the calendar or list of all the prisoners' names with their separate judgments in the margin, which is left with the sheriff. As for a capital felony, it is written opposite to the prisoner's name, "Hanged by the neck;" formerly in the days of Latin and abbreviation, *sus. per coll.*, for *suspendatur per collam*. 4 *Bl. Com.* c. 32.

SUTHDURE, the south door of a church, where canonical purgation was performed, and plaints, &c., were heard and determined.

SWARF-MONEY, warth-money or guard-money, paid in lieu of the service of castleward.

SWEARING, the act of declaring upon oath. Profane swearing and cursing is an offence against God and religion, punishable summarily by fine. 19 *Geo. II.*, c. 21.

SWEARING THE PEACE, showing to a Judge that one has just cause to be afraid of another in consequence of his menaces or attempts, in order to get him bound to keep the peace.

SWEINMOTE, *court of*, one of the forest courts, which is to be holden before the verderors as Judges, by the steward, thrice in every year, the sweins or freeholders within the forest composing the jury. The principal jurisdiction of this court is first to enquire into the oppressions and grievances committed by the officers of the forest; and secondly, to receive and try presentments certified from the court of attachments, against offenders in vert and venison. And this court may not only enquire but convict also, which conviction shall be certified to the court of justice-seat under the seals of the jury; for this court cannot proceed to judgment. 4 *Inst.* 289.

SWINDLER, a cheat; one who lives by cheating.

SWOLING OF LAND, so much land as one's plough can till in a year; a hide of land.

SWORN BROTHERS [*fratres jurati*], persons who, by mutual oaths, covenanted to share in each other's fortunes.

SYB AND SOIN, peace and security.

SYLVA CÆDUA [*subbois*], wood under twenty year's growth.

SYMBOLIC DELIVERY. See **LIVERY OF SEISIN.**

SYNCOPARE, to cut short, or pronounce things so as not to be understood. *Cowell.*

SYNDICOS, an advocate or patron; a burgess or recorder.

SYNGRAPH, a deed, bond, or writing, under the hand and seal of all the parties.

SYNOD, a meeting or assembly of ecclesiastical persons concerning religion; being the same thing in Greek, as convocation in Latin.

There are four kinds:

1. A general or universal synod or council, where bishops of all nations meet.

2. A national synod of the clergy of one nation only.

3. A provincial synod, where ecclesiastical persons of a province only assemble, being now what is called the convocation.

4. A diocesan synod, of those of one diocese.

A synod in Scotland is composed of three or more presbyteries.

SYNODAL, a tribute or payment in money paid to the bishop or archdeacon by the inferior clergy, at Easter visitation.

SYNODALES TESTES, synods-men, corrupted into sidesmen, were the urban and rural deans, now the churchwardens.

T

T, every person who was convicted of felony, short of murder, and admitted to the benefit of clergy, was marked with this letter upon the brawn of the thumb. It is abolished. 7 & 8 Geo. IV., c. 27.

TABARD [*tabar*, Wel., *tabardum*, low Lat.], a short gown; a herald's coat.

TABARDER, one who wears a tabard or short gown: the name is still preserved in certain bachelors of arts on the old foundation of Queen's College, Oxford. *Encyc. Lond.*

TABELLION, a notary public.

TABLE-RENTS, payments to bishops, &c., reserved and appropriated to their table or house-keeping.

TAC FREE, exempt from rent, payments, &c. *Tacita quædam habentur pro expressis.* 8 Co. 40.—(Things silent are sometimes considered as expressed).

TACITE RELOCATION, a silent or understood reletting of premises after the expiration of a lease, upon the same terms, &c., as contained in such lease. *Scotch Phrase.*

TACK, a lease; also, an addition, supplement.

TACK-DUTY, rent reserved upon a lease.

TACKING, an equitable doctrine, which permits an union of securities given at different times, so as to prevent any intermediate purchasers from claiming a title to redeem, or otherwise to discharge one lien, which is prior, without redeeming or discharging the other liens also which are subsequent to one's own title.

Lord Harkwicke gives the following ac-

count of the origin and foundation of this doctrine:—

“As to the equity of this court, that a third incumbrancer having taken his security or mortgage without notice of the second incumbrance, and then, being *puisné*, taking in the first incumbrance, shall squeeze out and have satisfaction before the second; that equity is certainly established in general, and was so in *Marsh v. Lee* by a very solemn determination of Lord Hale, who gave it the term of the creditor's *tabula in naufragio*. That is the leading case. Perhaps it might be going a good way at first, but it has been followed ever since, and, I believe, was rightly settled only on this foundation by the particular constitution of the law of this country. It could not happen in any other country but this; because the jurisdiction of law and equity is administered here in different courts, and creates different kinds of right in estates. And, therefore, as courts of equity break in upon the common law, where necessity and conscience require it, still they allow superior force and strength to a legal title to estates; and, therefore, where there is a legal title and equity on one side, this court never thought fit that by reason of a prior equity against a man who had a legal title, that man should be hurt, and this by reason of that force this court necessarily and rightly allows to the common law and to legal titles. But if this had happened in any other country, it could never have made a question; for if the law and equity are administered by the same jurisdiction, the rule *qui prior est tempore potior est in jure* must hold.” *Wortley v. Birkhead*, 2 Ves. 573.

But if a *puisné* creditor by judgment, statute, or recognizance, should buy in a prior mortgage, he would not be allowed to tack his judgment to such mortgage, so as to cut out a mesne mortgagee. For a creditor can in no just sense be called a purchaser, since he does not advance his money upon the immediate credit of the land, nor acquire by his judgment any right in the land. He has neither *jus in re* nor *jus ad rem*, but a mere lien upon the land, which may or may not afterwards be enforced upon it. But if, instead of being a judgment creditor, he were a third mortgagee, and should then purchase in a prior judgment, statute, or recognizance, in such case he would be entitled to tack, because he originally advanced his money upon the credit of the land; and this same principle applies to a first mortgagee lending to the mortgagor a further sum upon a statute or judgment. The party tacking must hold the both securities in the same right. 1 *Story's Eq. Jurisp.* 330.

TAIL. An estate tail is a conditional freehold of inheritance, limited to a person and his descendants general or special, male or female. The estate reverts to the donor (i. e., reversioner), if the donee die without leaving descendants answering to the condition annexed to the estate upon its creation,

unless there be a limitation over to a third person on default of such descendants, upon default of which the estate vests in such third person (i. e., remainder-man).

Now before the Statute *de Donis Conditionalibus*, the donee could, after issue born, alien the land which disinherited the issue and deprive the donor of his right of reversion. This being the case, the statute declared that the will of the donor should be observed; and that an estate granted to a man and the heirs of his body should descend to the issue (he not having power to alienate the estate), and that in default of issue, the land should revert to the donor or his heirs. Estates tail were thus made inalienable, and neither the issue nor the remainder-man could be barred. The legislature having fettered the land by an indestuctable entail, which prevented money being raised upon it, cramped the energies of commercial pursuits, and withered the efforts of honourable industry. And experience proved the production of many other inconvenient consequences, which, quickening the ingenuity of the judicature, produced, at length (in its efforts to recover the liberty of alienation), the complicated machinery of fines and recoveries. See FINE.

A common recovery (*recuperatio*—sufferable only in term time) was a fictitious action, in which the demandant or plaintiff recovered the land by a judgment at law (grounded upon a prior title), against the tenant of the freehold, technically called the tenant to the *præcipe*, who was supposed to have acquired the land from a third person, called the vouchee, who had warranted the title, and this third person was supposed to have acquired it from a fourth person, who had also warranted the title, which fourth person was frequently represented by the crier of the court, and called the common vouchee. The usual mode of proceeding was simply this:—a writ, called a *præcipe quod reddat in the post*, issued at the instance of the demandant, commanding the actual tenant of the freehold, usually called the tenant to the *præcipe*, to restore the land to such demandant; the tenant then vouched, i. e., called the vouchee, by reason of his warranty, to defend the possession, who, in his turn, vouched over the common vouchee, who made default, and the judgment was, that the demandant do recover the land from the tenant, who should recover a recompense in land of equal value from the vouchee, who, in his turn, should recover a similar recompense from the common vouchee. The supposed recompense was usually assigned as the reason why the issue in tail, and the remainders and reversion were barred. This proceeding, altogether fictitious, was called a common recovery with double voucher. A recovery might have been suffered with a single voucher, but it was not usual, for it only barred the estate tail, of which the tenant in tail was then seized, and not the remainders or reversion.

A recovery with treble voucher was sometimes suffered, where two estates tail existed at the same time in distinct persons, the one derived out of the other; its necessity, however, was considered doubtful.

The modes, then, of barring an estate-tail were two, viz., a fine, according to the statute law (which was a compromise of a fictitious action), giving a base fee commensurate with the continuance of the issue, upon whom the estate-tail would (if unbarred) have devolved, and a recovery at the common law (which was a real action carried on to judgment), giving the fee-simple absolute. It may be observed, in concluding this slight sketch of these assurances, that they might have been used as ordinary conveyances, as well as for the purposes mentioned; but they were never advisedly used, on account of their tortious (i. e., forfeitable) operation.

It is a new feature in modern legislation for every considerable statute to carry with it its own dictionary, and many terms are used in a more or less extended sense in different acts, which cannot fail to produce doubt, confusion, and perplexity. It becomes a question of serious importance, whether there should not be a statute defining, exactly, technical terms, by which their meaning in every act should be interpreted.

The first section of the 3 & 4 Wm. IV. c. 74, comprehends a glossary of the following terms used in it:—The word “lands” is to extend to “manors, advowsons, rectories, messuages, lands, tenements, tithes, rents, and hereditaments of any tenure (except copy of court roll), and whether corporeal or incorporeal, and any undivided share thereof; but when accompanied by some expression, including or denoting the tenure by copy of court roll, it shall extend to manors, messuages, lands, tenements, and hereditaments of that tenure, and any undivided share thereof.”

“Estate,” to extend to “an estate in equity as well as at law, and to any interest, charge, lien, or incumbrance in, upon, or affecting lands, either at law or in equity, and to any interest, charge, lien, or incumbrance in, upon, or affecting money, subject to be invested in the purchase of lands.”

“Base fee,” to mean “exclusively that estate in fee simple into which an estate tail is converted, where the issue in tail are barred; but persons claiming estates, by way of remainder or otherwise, are not barred.”

“Estate tail,” in addition to its usual meaning, to mean “a base fee into which an estate tail shall have been converted.”

“Actual tenant in tail,” to mean “exclusively the tenant of an estate-tail which shall not have been barred, and such tenant to be deemed an actual tenant in tail, although an estate-tail may have been divested or turned to a right.”

“Tenant in tail,” to mean “not only an actual tenant in tail, but also a person who, where an estate tail shall have been barred

and converted into a base fee, would have been tenant of such estate tail if the same had not been barred."

"Tenant in tail entitled to a base fee," to mean "a person entitled to a base fee, or to the ultimate beneficial interest in a base fee, and who, if the base fee had not been created, would have been actual tenant in tail."

"Money subject to be invested in the purchase of lands," to include "money whether raised or to be raised, and whether the amount thereof be or be not ascertained, and to extend to stocks and funds, and real and other securities, the produce of which is directed to be invested in the purchase of lands, and the lands to be purchased with such money or produce, to extend to lands held by copy of court roll, and also to lands of any tenure, in Ireland, or elsewhere out of England, where such lands, or any of them, are within the scope or meaning of the trust or power directing or authorising the purchase."

The word "person" to extend to "a body politic, corporate, or collegiate, as well as to an individual."

"Every word importing the singular number only, to extend and be applied to several persons or things, as well as to one person or thing; and every word importing the plural number, to extend and be applied to one person or thing, as well as several persons or things; and every word importing the masculine gender only, to extend and be applied to a female as well as to a male."

"Every assurance already made, or hereafter to be made, whether by deed, will, private act of Parliament, or otherwise, by which lands are or shall be entailed, or agreed or directed to be entailed, to be deemed a settlement; and every appointment made in exercise of any power contained in any settlement, or of any other power, arising out of the power contained in any settlement, to be considered as part of such settlement, and the estate created by such appointment to be considered as having been created by such settlement."

This section of definitions concludes with a provision, "that those words and expressions occurring in this clause, to which more than one meaning is to be attached, are not to have the different meanings given to them by this clause, in those cases in which there is anything in the subject or context repugnant to such construction."

The enactments following (which extend from section 2 to section 14, both inclusive) may be thus briefly stated:—

No fine or recovery is to be levied, or suffered, after the 31st December, 1833, except a writ of *dedimus*, or other writ, in the regular course of a fine or recovery, have been sued out before this date; but there is no time named for completing such fine or recovery (§ 2).

Persons under covenants (before the act came into operation) to levy fines, or suffer

recoveries, are to effect such purposes by the means pointed out in this act; but if such purposes cannot be so effected, then by a special deed, which shall have the same operation as a fine or recovery (§ 3).

Fines and recoveries of lands in ancient demesne, when levied or suffered in a superior court, may be reversed, as to the lord, by writs of deceit, but they shall be as valid against the parties thereto, and persons claiming under them, as if not reversed as to the lord (§ 4). Fines and recoveries of lands in ancient demesne, levied or suffered in the manor court, after other fines and recoveries in a superior court, shall be valid, as if the tenure had not been changed, nor shall they be invalid in other cases, though levied or suffered in courts whose jurisdictions may not extend to the lands therein comprised (§ 5). The tenure of ancient demesne, where suspended or destroyed by fine or recovery in a superior court, shall be restored, where the rights of the lord have been recognized within twenty years immediately preceding the 1st January, 1834 (§ 6).

Fines are made valid without amendment of any errors in form (§ 7), and so are recoveries (§ 8).

Provision saving jurisdiction in cases unprovided for by the act (§ 9). Recoveries are made valid where the bargain and sale, to make the tenant to the *præcipe*, has not been duly enrolled (§ 10), within six lunar months, in Chancery, under the provisions of the 27 Hen. VIII., c. 16. This clause enlarges indefinitely the time for enrolment. Also, where the owner of the *legal* freehold (the trustee) had not concurred in making a good tenant to the *præcipe*, provided the beneficial owner of the freehold in possession (the *custui que* trust) shall, within the time limited for making the tenant, have conveyed to the tenant (§ 11). It is to be observed, that a recovery, void for want of an effectual legal conveyance, by a person seized at law for his *own* benefit, is not aided by this act.

The following are the cases in which fines and recoveries are not made valid by the act:—Where they have been wholly reversed before its passing; or partly, so far as the part reversed; where any person, whom the fine or recovery, if valid, would have barred, shall, before the act, have had dealings with the lands, on the faith of the invalidity of the fine or recovery; where any person shall, at the passing of this act, have been in possession in respect of an estate which the fine or recovery, if valid, would have barred; where any court of competent jurisdiction shall have refused to amend them; where proceedings were pending at the passing of this act; and if such proceedings abate by the death of any of the parties thereto, any person having a right of action or suit, by reason of the invalidity of such fine or recovery, shall retain it, if he commence proceedings within six calendar months after such party's death (§ 12).

The thirteenth section relates to the custody of the records of fines and recoveries. The 5 & 6 Wm. IV., c. 82, abolished the offices connected with fines and recoveries in the court of Common Pleas, and transferred the record and the duties to the officer of the same court, appointed under the 3 & 4 Wm. IV., c. 74, for registering the certificates of acknowledgment of married women subject to the order of such court.

Estates tail, and estates expectant thereon, are no longer barrable by warranty, since 31st December, 1833 (§ 14).

Thus, then, all the fictions, together with their cumbrous technicality, which had been invented by legal artifice and judicial contrivance, in contravention of the unrepealed Statute *de Donis*, were happily abolished; and what the legislature could not do, in the reign of our second Edward, by reason of the mighty power of the barons—the great proprietors of the soil—it effected in the reign of our late Sovereign—the virtual repeal of the Statute of Westminster 2, and the recognition of the right of barring estates tail, prescribing and simplifying the mode of disposition.

The general enabling clause (§ 15) enacts, that “after the 31st December, 1833, every *actual tenant in tail* (consult the glossary clause), whether in possession, remainder, contingency, or otherwise, shall have full power to dispose of, for an estate in fee simple absolute, or for any less estate, the lands entailed, as against all persons claiming the lands entailed by force of any estate tail which shall be vested in, or might be claimed by, or which, but for some previous act, would have been vested in, or might have been claimed by the person making the disposition, at the time of his making the same, and also as against all persons, including the King’s most excellent Majesty, his heirs and successors, whose estates are to take effect *after* the determination, or in defeazance of any such estate tail; saving always the rights of all persons in respect of estates prior to the estate tail, in respect of which such disposition shall be made, and the rights of all other persons, except those against whom such disposition is by this act authorized to be made.” The 11 Hen. VII., c. 20, is repealed, except as to lands comprised in any settlement made before this act, where, if any woman be tenant in tail within the provisions of such act, the power of disposition must be regulated thereby (§§ 16, 17). The power of disposition is not to extend to tenants of estates tail, who, by the 34 & 35 Hen. VIII., c. 20, are tenants in tail of any lands given by the Crown, the reversion or remainder being in the king, or who are by any other act restrained from barring their estates tail, or to tenants in tail after possibility of issue extinct (§ 18). Power is then given to enlarge base fees, created by barring estates tail into fees simple absolute, with the same saving as is set forth in the fifteenth section, and with the protector’s consent

(§ 36); but the issue inheritable to any estate tail cannot bar any expectancies (§§ 19, 20).

This clause puts an end to the power of an heir expectant in tail, whose fine with proclamations, levied in the father’s lifetime, would have barred the estate tail in the event of its devolving upon him, or upon his issue in tail, but it is to be observed, that this section does not apply to a gift under which the heirs are *purchasers*, as where the legal freehold is limited to A., with an *equitable* remainder to the heirs of his body, or the converse; or where there is a limitation to the heirs of the body of A., who takes no estate, or an estate less than freehold, for then the heirs take by original acquisition, and not in the language of this clause, “as issue inheritable to any estate tail.”

If a tenant in tail of lands dispose thereof by way of mortgage, or for any other limited purpose, “such disposition shall, to the extent of the estate created, be an absolute bar, in equity as well as at law, to all persons as against whom such disposition is by this act authorised to be made, notwithstanding any intention to the contrary may be expressed or implied in the deed by which the disposition may be effected: provided always, that if the estate thus created, shall be only an estate *pour autre vie*, or for years absolute or determinable, or an interest, charge, lien, or incumbrance be created without a term of years absolute or determinable, or any greater estate for securing or raising the same, then such disposition shall in equity be a bar only so far as may be necessary to give full effect to the mortgage, or to such other limited purpose, or to such interest, lien, charge, or incumbrance, notwithstanding any intention to the contrary may be expressed or implied in the deed by which the disposition may be effected” (§ 22).

The meaning of this clause is simply this:—if a tenant in tail make a mortgage in fee with the usual proviso for redemption, he will be entitled to the equity of redemption discharged from the entail; but if he create an estate *pour autre vie*, or for years only, or an interest, charge, or incumbrance, without a term of years, by way of mortgage, the entail will be effected only to the extent of the charge, although there be an express declaration of intention that the deed shall operate as a complete bar of the entail. The object is to prevent a mere declaration that the entail shall or shall not be barred from having any operation, but not to affect express limitations.

In order to provide a check to the barring of estates tail, so as to prevent a son, tenant in tail, upon attaining his majority, defeating a strict family settlement, against the wish of his father, the tenant for life, the legislature has introduced a reasonable but unaccountable agent, denominated “*the protector of the settlement*,” who is, in many respects, but not in all (as we shall presently see), analogous to the abolished “*tenant to the prince*,” who was

a mere-technical creature, and whose protection was both arbitrary and defective, besides being productive of numerous difficulties. The office of this novel conservative power (as he has been called) is to grant or withhold his consent, which is required to enable a tenant in tail in remainder, expectant on an estate of freehold to bar as well his own issue, as also those in remainder, to the same extent as might have been effected by a recovery. It is to be observed, that an expectant tenant in tail may bar his own issue *only*, under this act, without the consent of the protector.

The protector is thus defined:—"if, at the time when there shall be a tenant in tail of lands under a settlement, there shall be subsisting in the same lands, or any of them under the same settlement, any estate for years determinable on the dropping of a life or lives, or any greater estate (*not being an estate for years*), prior to the estate tail, then the owner of the prior estate, or the first of such prior estates (if more than one) then subsisting under the same settlement, or who would have been so if no absolute disposition thereof had been made (the first of such prior estates, if more than one, being, for all the purposes of this act, deemed the prior estate), shall be the *protector of the settlement*, so far as regards the lands in which such prior estate shall be subsisting, and shall for all the purposes of this act be deemed the owner of such prior estate, *although* the same may have been charged or incumbered either by the owner thereof or by the settlor, or otherwise, howsoever; and *although* the whole of the rents and profits be exhausted or required for the payment of the charges and incumbrances of such prior estate, and *although* such prior estate may have been absolutely disposed of by the owner thereof, or by or in consequence of the bankruptcy or insolvency of such owner, or by any other act or default of such owner." It is to be observed, that his prior estate must continue to subsist, for if it be merged, surrendered, or determined by forfeiture, it is presumed that he would cease to be the protector. The section then goes on to enact, "that an estate by the courtesy, in respect of the estate tail, or of any prior estate created by the same settlement, shall be deemed a prior estate under the same settlement within the meaning of this clause; and that an estate by way of resulting use or trust to or for the settlor, shall be deemed an estate under the same settlement within the meaning of this clause" (§ 22).

"Where two or more persons shall be owners of a prior estate under a settlement, the sole owner of which would, in respect thereof, have been the protector, each of such persons in respect of such undivided share as he could dispose of, shall, for all the purposes of this act, be deemed the owner of a prior estate, and shall be the sole protector to the extent of such undivided share" (§ 23). Where the estate conferring the

protectorship is limited to a married woman, the husband and wife are protectors as one owner, unless the estate be settled to her separate use, when she is sole protector (§ 24).

Where an estate shall be limited by a settlement by way of confirmation, or where the settlement shall merely have the effect of restoring an estate in either of those cases, such estate, for the purposes of this act, so far as regards the protector, shall be deemed a subsisting estate under such settlement" (§ 25); excepting a lease at a rent, in which case the lessee is not to be a protector (§ 26).

No woman, in respect of her dower, and no bare trustee, heir, executor, administrator, or assign, in respect to any estate taken by him *as such*, shall be the protector, *except* he be a bare trustee under a settlement made before the passing of this act (28th August, 1833), (§§ 27 and 31). A trustee, therefore, having the first immediate estate of *freehold*, will be the protector of a settlement made before 28th August, 1833. Where the owner of the prior estate is excluded by the 26th and 27th sections, then the persons, if any, who, if such estate did not exist, would have been the protector, shall be such protector (§ 28).

Where, on or before the 31st December, 1833, an estate *under a settlement* shall have been disposed of either absolutely or otherwise, and either for valuable consideration or not, the person who, in respect of such estate, would have been the person to make a tenant to the *præcipe* for suffering a common recovery of the lands entailed by such settlement, is, during the continuance of the estate, to be the protector (§ 29). Also, if any person having, on or before 31st December, 1833, disposed of a remainder or reversion in fee, would not, under the general provisions of the act, be the protector, then the person who would have been the person to make the tenant to the *præcipe* is, during the continuance of the estate which would have conferred the right to make the tenant, declared to be the protector (§ 30).

It will be necessary then, where it is intended to bar an entail created on or before the 31st December, 1833, to ascertain in whom the immediate freehold of the lands is vested, in the same way as it was required in order to determine who was the proper person for making a tenant to the *præcipe* in a recovery. The estate, under the 29th section, must be created by the same instrument which creates the estate tail:—for instance, if land be conveyed to A. for life, and afterwards a settlement of the reversion be made to B. in tail, and A. alienates his life estate to C. on or before 31st December, 1833, C. would not be the protector under this act, though he would have been the person to make the tenant to the *præcipe* under the old law; and this is one case in which the old tenant to the *præcipe* is not analogous to the

protector of a settlement. If, however, the estate for life to A., and the estate tail to B. were created by the *same* settlement, then C. would have been the protector. An instance of the operation of the 30th section, may be where A., a tenant for ninety-nine years, determinable on his death, with remainder to B. for life, with remainder to C. in tail, with remainder or reversion to the said A. in fee, should have aliened his remainder or reversion on or before the 31st December, 1833, in such case B. and his assigns would, during his (B.'s) life estate, be the protector; otherwise A. might have consented, as the protector in respect of his chattel interest to the barring of his own remainder or reversion. Under the old law B. would have been the person to make the tenant to the *præcipe*, he having the first estate of freehold.

The 32nd section enables a settlor, not only to appoint any persons *in esse*, not exceeding three (exclusive of aliens), whether taking an interest under the settlement or not, to the office of protector, but also by means of a power of nominating to vacancies inserted in the settlement, duly inrolled, as afterwards shown, to continue the protectorship in any persons *in esse*, not exceeding three, for the whole or any part of the period for which the office would have endured by force of the limitation. The person who, in respect of the prior estate, would ordinarily be the sole protector, may be appointed one of the special protectors, and, if so appointed, will, unless there be a direction to the contrary, continue protector, after the death or resignation (by deed inrolled) of the rest, until further appointment. It must be observed that this power is one of substitution only, not authorizing the creation of a protectorship, where none would otherwise exist.

Where the protector is rendered incompetent to exercise his functions by reason of lunacy, idiotcy, or unsound mind (whether found so by inquisition or not), or by conviction of treason or felony, or by *not* being the owner of a prior estate under a settlement, and is an infant, or it be uncertain whether he is living or dead, or where the settlor declares that the person who, as owner of a prior estate, would be protector, shall not be protector, *and does not appoint another*, or where from any other cause, there shall, notwithstanding the existence of a prior estate sufficient to constitute a protector, be no protector, the office is vested in the Lord Chancellor, or the Lord Keeper, or Commissioners of the Great Seal, or other person or persons intrusted with the care of lunatics, where the protector is a lunatic (§ 33).

The powers of the protector are thus defined:—if, when any person, actual tenant in tail of lands under a settlement, but not entitled to the remainder or reversion in fee immediately expectant on the determination of his estate tail, desires to dispose of the lands entailed, there be a protector, then his consent shall be requisite to enable such tenant to dispose of the entailed lands to the

full extent, but the tenant may, without such consent, dispose of the entailed land, which shall be good against all persons who claim from the tenant (§ 34). This, then, is equivalent to a fine with proclamations, while to render the assurance of equal efficacy with a recovery, the consent of the protector, if any, must be obtained. Another difference between the old tenant to the *præcipe* and the new protector of the settlement is, that the former was a *conveying*, the latter a mere *consenting* party, unless his estate is intended to be passed, then, of course, he must be also a *conveying* party, and he is made so in the following precedent:—

The discretion of the protector in giving his consent is declared absolute in every case; his office is not fiduciary, nor is his conduct impeachable, or examinable in equity; the rule in relation to transactions between the donee of a power, and any object of the power in whose favour the same may be exercised, not being applicable to protectors; he may, therefore, make what bargain he pleases with the tenant in tail, but in agreement with the remainder man or reversioner, or any other person to withhold his consent, would be void (§§ 36, 37).

If a voidable estate be created by a tenant in tail in favour of a purchaser for valuable consideration, and the tenant in tail afterwards make a disposition of the lands, under this act, by any assurance *other than a lease not requiring enrolment*, such disposition, whatever its object or extent, shall (if made with the consent of the protector, if any) confirm such voidable estate against all persons *except* a purchaser, without notice of such voidable estate, and the persons claiming under him. But should the protector, if any, not consent, and the voidable estate cannot be confirmed to the full extent without such consent, then the same shall be confirmed, so far as the tenant in tail could confirm such estate, under this act, without such consent (§ 38). Whenever a person entitled to a base fee shall become entitled to the *immediate* reversion or remainder, the base fee shall *not merge*, but shall be, *ipso facto*, *enlarged* into as great an estate as the tenant in tail, with protector's consent, if any, might have created if the remainder or reversion had been vested in another person (s. 39).

This last section gets rid of a prejudice to title, for when the base fee *merged* in the remainder or reversion, the charges and estates made and created by the persons through whom the remainder or reversion was derived, were let in, this rendered it necessary to make out the tenant in tail's title to the reversion or remainder, which was frequently attended with great difficulty and expense, all which is now obviated by preserving base fees from merger and enlarging them.

Let us mark the main differences between the old and the new systems, as to their effect upon the tenant in tail. The power of a

tenant in tail is precisely similar under the new law, with the protector's consent, as it was under the old law, with the concurrence of the tenant to the *præcipe*: viz., the acquirement of a new fee simple, discharged from the estate tail, and all posterior limitations.

The fine with proclamations of a tenant in tail in possession; remainder, or reversion, to another in fee, barred the issue in tail absolutely, and acquired a *fee simple*, defeasible only by the remainder man or the reversioner, who had a mere *right of action* (that was only descendible), which, being released to the tenant in tail, he acquired the absolute fee simple, the right being extinguished; if, however, the tenant in tail was in remainder, the fine then acquired a *base fee*, determinable on the failure of the issue in tail, but the remainder or reversion subsisted as an *estate* expectant on the determination of the base fee; but if the remainder or reversion became vested in the tenant in tail, the base fee merged in it, and produced an absolute fee simple; and this was the result when the tenant in tail, whether in possession or not, had the remainder or reversion in fee vested in himself. But, under the new law, where a tenant in tail, whether in possession or not, with remainder or reversion in fee over, makes an assurance, without the protector's consent, if any, it bars the issue in tail, and acquires a base fee determinable on failure of such issue, but, instead of divesting the remainder or reversion, and turning it to a right of action, it subsisted as an *estate* expectant on the determination of the base fee, and both alienable and devisable. And if the remainder or reversion became vested in the tenant in tail, the base fee *does not merge* in it, as under the old law, but it is *enlarged* into an absolute fee simple, and this will be the result where the remainder or reversion in fee is vested in the tenant in tail, whether in possession or not.

We will now consider the clauses substituting more simple modes of assurance.

Every disposition of lands by a tenant in tail is to be effected by some one of the assurances evidenced by deed (not being a will or a contract either express or implied) used for the conveyance of fee-simple estates. If the tenant in tail be a *feme covert*, her husband's concurrence is necessary, and her deed must be duly acknowledged (§ 30).

The tenant in tail, then, for the purposes of this act, is treated as having a *legal* estate of fee simple in the land (no matter what his estate tail may be), he must, therefore, convey by one of those modes of assurance which the law has appropriated to the transfer of freehold interests. At the same time, it should be considered whether he is in possession or not, and whether the subject of conveyance is corporeal or incorporeal. These modes of assurance are feoffment (at the common law), bargain and sale, covenant to stand seized, and a release (under the Statute of Uses) if the estate tail be in pos-

session, or the subject be corporeal, but if the estate tail be not in possession, or it be incorporeal, then by grant. The general and uniform practice, however, is to adopt, in every case, the common assurance by release.

In selecting a precedent of an assurance, for the purpose of illustrating the practical operation of this statute, we have confined it to the primary object of acquiring the absolute fee simple by barring the entail. The precedent is a release by protector, tenant for life, and tenant in tail in remainder, under a strict settlement, for the purpose of barring the entail and all remainders expectant thereon, in contemplation of an ulterior disposition. And since the disentailing deed must be enrolled, and the contents exposed, it will be often desirable to confine it to the primary object of acquiring the dominion over the fee simple. It begins thus:—

This indenture, made the day of , in the year of our Lord , in pursuance of the statute passed in the ninth year of the reign of her present Majesty, for rendering a release as effectual for the conveyance of freehold estates, as a lease and release by the same parties. Between [*protector tenant for life*] of, &c., of the first part; [*tenant in tail*] of, &c., of the second part; and [*releasee*] of, &c., of the third part."

As to the protector's consent, it may either be given by the same assurance by which the disposition is effected, or by a deed distinct from the assurance, executed either on or at any time before the day on which the assurance is made, otherwise the consent will be void; if the protector consent by a distinct deed, such consent will be deemed absolute and unqualified, unless he refer to the particular assurance, and confine his consent to the disposition thereby made. His consent once given cannot be revoked. A married woman, being a protector, gives her consent in the same manner as if she were a *feme sole* (§§ 42, 43, 44, 45).

The 47th section anxiously excludes courts of equity from giving any effect to dispositions by tenants in tail, or to consents of protectors, which, in courts of law, would not be effectual.

In the case of a protector being lunatic, idiotic, or of unsound mind, the Lord Chancellor, upon the motion or petition of the tenant in tail, in a summary way, has full power to consent to a disposition by a tenant in tail, and to make such orders in the matter as shall be deemed necessary: and if any other person be a joint protector, he must give his consent in the ordinary manner. The order of the Lord Chancellor is to be evidence of consent, without any document or instrument (§§ 48, 49).

From the Lord Chancellor's decisions, on applications to him in cases of lunatic protectors, it may be collected that the power will be exercised in support of the settlement, and not in opposition to its apparent designs. Lord Brougham, when Chancellor,

made an order for enabling a *quasi* tenant in tail in remainder of stock, the produce of lands sold under the order of the court, and subject to the same uses as the lands had been, and of which the tenant for life was a lunatic, to dispose of the fund, the case falling within the provisions of the 33d and 48th sections of this act. When the party has not been found a lunatic by inquisition, it will probably be referred to a Master in Chancery to ascertain such fact. The Lord Chancellor is not authorised, when the *tenant in tail* in possession is in a state of hopeless lunacy, to consent to the first tenant in tail in remainder barring the subsequent limitations, even for the purpose of preventing the settled estate from going over to collateral relations. It will be observed that the 22d, 33d, and 48th sections provide only for the case of a lunatic who is *tenant for life* of the settled estate. Lord Cottenham, in *Re Newman*, gave judgment as follows:—“This petition came before me as protector of the settlement under the Fines and Recoveries’ Act, to induce me to consent to a deed of disposition on the part of the lunatic, who is tenant for life, to act, in fact, for the tenant for life, in order to give effect to a recovery (*evidently meaning a deed of disposition under this act*). As protector of the settlement, the *only duty* of the court is, to see what, in reference to the interest of the family, it would be proper for the tenant for life to do; and the purpose must be rather to protect the objects of the settlement, than to give any benefit to one member of the family, to the exclusion of the others. Now, if nothing is done, one sixth will go to this daughter (the wife of the petitioner) and her children, if she have any, and if not, to the eldest son of the testator as his right heir; and I am asked to consent to that which will take it away from the eldest son, and take it away from the family, by giving it to the husband of the daughter. That would be anything but protecting the settlement; it would be destroying it; giving the estate to a person not a member of the family, namely, the husband of the daughter. I should not consider that it would be a proper act for the tenant for life to concur in a deed of disposition to that effect.”

The Court of Chancery is not the protector, where the tenant for life is a *feme covert*, whose husband has been convicted of felony, and the life estate is not settled to her separate use.

But to proceed with the precedent. After the parties follow the recitals:—

Whereas, by indentures of release and settlement, bearing date, &c. (*setting forth the instrument in the formal manner.*)

The marriage and birth of tenant in tail, and the deaths of any of the parties, should be recited, and then the recital of the desire of the tenant for life (protector), and the tenant in tail to acquire the fee simple (although the release will bar the entail,

and remainders without any such recital) thus:—

“And whereas the said [*protector*] and [*tenant in tail*] are desirous that the inheritance in fee simple in possession of the said manors, messuages, lands, tenements, and hereditaments shall be limited to the uses, and in manner hereinafter expressed.”

Then will follow the *testatum*. It is clear the estate tail and remainders may be effectually destroyed by an assurance altogether silent as to its object, yet it will be advisable always to declare the intention, which is disclosed immediately before the operative parts, or at the close of the *habendum*; It is inserted here in both places. Some conveyancers refer to the act itself, but seeing that it is a public and notorious statute, it appears to be quite unnecessary. They argue, however, that such a reference removes all doubt as to the intention; for, before the statute, a release, grant, or bargain and sale of the tenant in tail, although enrolled, passed only a base fee, determinable by the issue in tail; and therefore, if this act be not referred to, nor the intention to bar stated, a question may arise whether the assurance will take effect at common law, or operate under this act. The reference is made *ex abundanti cautela*, and, in the opinion of the best lawyers, is deemed altogether superfluous.

The *testatum*, with the intention expressed, thus runs:—

“Now this indenture witnesseth, that, in order to defeat and destroy all estates tail of the said [*tenant in tail*] in the manors, messuages, lands, tenements, and hereditaments hereinafter described or referred to; and all estates, rights, titles, interests, and powers to take effect after the determination, or in defeazance of such estates tail, and in order to assure and limit the inheritance in fee simple in possession, of and in the same manors, messuages, lands, tenements, and hereditaments, to the uses, and in the manner hereinafter expressed, and in consideration of ten shillings paid by the said [*releasee*] to each of them the said [*protector and tenant in tail*] on the execution of these presents, the receipt whereof is hereby acknowledged. The said [*protector*], and also the said [*tenant in tail*], with the consent of the said [*protector*], as protector of the settlement made by the said recited indentures, *have* and each of them *hath* granted, released, and confirmed, and by these presents *do* and each of them *doth* grant, release, and confirm unto the said [*releasee*] and his heirs, all [*parcels*], and also all other the manors, messuages, lands, tenements, and hereditaments of which the said [*tenant in tail*] is tenant in tail, or is entitled to be tenant in tail, by virtue of the said recited indentures; together with all the rights, members, and appurtenances thereunto belonging; and all the estate, right, title, and interest of the said [*protector and tenant in tail*] respec-

lively therein and thereto. To have and to hold the said manors, messuages, lands, tenements, hereditaments, and premises hereby released or intended so to be, with their appurtenances unto the said [releasee], and his heirs for ever (freed and discharged from the said estates tail, and all estates, rights, titles, interests, and powers to take effect after the determination, or in defeazance of the said estates tail); nevertheless, to such uses, upon such trusts, for such intents and purposes, subject to such powers and provisions, and generally in such manner as the said [protector and tenant in tail] by any deed or deeds revocable or irrevocable, to be executed by them in the presence of and attested by one or more than one witness, shall at any time, or from time to time direct or appoint; and in default of such direction or appointment, and subject to any partial direction or appointment to the use of the said [protector] and his assigns for his life, in restoration of the life estate limited to him by the said recited indentures, with the same powers and privileges as belonged to him immediately before the execution of these presents, and after his decease, to the use of the said [tenant in tail], his heirs and assigns for ever; and to, upon, or for no other use, trust, intent, or purpose whatsoever. In witness, &c."

If, however, the estate is intended, in case of the default of appointment, to remain to the old uses, then, instead of the limitations set forth in the precedent, it will run thus:—

"To such uses, upon such trusts, and for such intents and purposes, and with and subject to such powers and provisions, as were subsisting concerning the said manors, messuages, lands, tenements, hereditaments, and premises, by virtue of the said recited indentures, immediately before the execution of these presents, so as to revive and restore the former title; and to, upon, or for no other use, trust, intent, or purpose whatsoever. In witness, &c."

Every assurance by a tenant in tail (except a lease for any term not exceeding twenty-one years, to commence from the date of such lease, or for any time not exceeding twelve calendar months from the date of such lease, where a rent shall be thereby reserved, which, at the time of granting such lease, shall be a rack rent, or not less than five-sixth parts of a rack rent) is inoperative, under this act, unless inrolled in Chancery within six calendar months after its execution (§ 41). The inrolment of a bargain and sale, or of a conveyance to charitable uses, according to this provision, will satisfy the requisition of the statutes 27 Hen. VIII., c. 16, and 9 Geo. II., c. 36, the inrolment being in the same court and within the same period. If the protector's consent be given by a distinct deed, as it is according to the above precedent, it will be void unless inrolled either at or before the time when the assurance is inrolled (§ 46).

This inrolment, requisite to give effect to a disentailing assurance, does not excuse a non-compliance with the requisition of any other law (except under the acts 27 Hen. VIII., c. 16, and 9 Geo. II., c. 36, just mentioned) in regard to inrolment or registration. If lands, therefore, lie within the registry districts, viz., Middlesex, Yorkshire, the Bedford Levels, and Kingston upon Hull, the deed must also be registered in the registry office of the district; or if it be the grant of a life annuity of more than 10*l.* per annum (unless on a sufficient pledge of lands in fee simple, or stock in the public funds) a memorial thereof must be inrolled in Chancery, within twenty days after its execution, according to the statutes 53 Geo. III., c. 141; 3 Geo. IV., c. 92; and 7 Geo. IV., c. 75.

Thus much as to the disentailment of freehold. Let us examine the sections relating to the barring of copyholds.

The previous clauses, except so far as they are varied by the clauses following, apply to copyholds; the disposition, however, of legal estates of copyhold must be by surrender, and of equitable estates either by surrender or by deed. If the protector consent by deed, it must be produced at or before the surrender, to the lord of the manor, his steward, or deputy, otherwise it will be void, and he will endorse on it the acknowledgment of production, and enter such deed and endorsement upon the manor rolls; the endorsement will be *prima facie* evidence of the production; a memorandum of entry on the manor rolls must also be endorsed on the deed. But if the consent be not by deed, it must be given to the person taking the surrender, and if the surrender be out of court, the consent must be stated in the memorandum of surrender, signed by the protector and entered on the manor rolls, which shall be good evidence of the consent and surrender; but if the surrender be in court, the lord, steward, or deputy, enters the surrender on the manor rolls, with a statement that such consent was given, and such entries or copies shall be evidence, as other entries or copies. An equitable tenant in tail has power of disposition by deed entered on the manor rolls. If protector consent by distinct deed, it will be void, unless executed on or before the day of the execution of the disposing deed, and entered on the manor rolls. Such entries are imperative on the lord, steward, or deputy, who must enter such deed on the manor rolls, and endorse upon it a memorandum thereof. The deed of disposition (unless entered on the rolls) will be void against purchasers, whose assurance is duly entered on the manor rolls. Inrolment in Chancery is not requisite as to copyholds, entry on the manor rolls being a substitute for it (§§ 50, 51, 52, 53, 54).

Copyholds are not entailable except by special custom, and in the absence of such a custom, the party who would have been

tenant in tail, will take a fee simple conditional at common law.

The estates tail of bankrupts are provided for by the following clauses: the 55th section repeals the Bankrupt Act, 6 *Geo. IV.*, c. 16, § 65, *so far as relates* to estates tail, but *not to extend* to the lands of a person made a bankrupt on or before the 31st December 1833, nor to revive former acts, and the 56th section substitutes provisions enabling any commissioner, acting under a fiat (under which there is an adjudication of a bankrupt, who at the time of issuing such fiat or at any time afterwards, *before he shall have obtained his certificate*, shall be an actual tenant in tail in lands of any tenure) to dispose by deed to a purchaser for valuable consideration, for as large an estate as the bankrupt tenant in tail, of lands of any tenure, could, at the time of such disposition, have effected, provided that if there be a non-consenting protector, the effect of the disposition will be equivalent only to that of a disentailing assurance made by the bankrupt without the protector's consent. If the bankrupt be entitled to a base fee, and there is no protector, the commissioner's deed enlarges it to the extent to which it might have been enlarged by the bankrupt. And the commissioner, with protector's consent (to be given in the same manner as we have before seen), confers a title to the fee, whether the estate tail be subsisting or be already converted into a base fee. The deeds are to be inrolled according to whether the lands are freehold or copyhold, precisely as it has been before stated. In the case of the bankrupt being tenant in tail, and the protector do not consent, so that only a base fee is passed, such fee, on there ceasing, during its continuance, to be a protector, is enlarged for the purchaser's benefit. And if the bankrupt were entitled to a base fee, arising from an estate tail, to which, if the base fee had not been created, he would have been entitled, and there should be a protector, such fee, on there ceasing, during its continuance, to be a protector, would be enlarged for the benefit of the purchaser. The commissioner's disposition confirms voidable dispositions for valuable consideration made by the bankrupt, whether tenant in tail or entitled to a base fee, to their full extent, *except* where the bankrupt, being tenant in tail, there is a non-consenting protector, and then to the extent only of the bankrupt's capacity, till there ceases, during the continuance of the base fee, to be a protector, when the confirmation is complete without more, but subject to a saving of purchaser's rights from the commissioner, without express notice of the voidable estate.

All dispositions by the bankrupt, which, if he had been owner in fee, would have been void as against the assignees, are avoided as against the commissioner's disposition, but, *except* as against the commissioner and the assignees, and persons claiming under them, the power of disposition given by the act are

preserved to the bankrupt. The bankrupt's death, *before* the commissioner's power is executed, is provided for by enacting that the commissioner's dispositions shall have the same effect, in the cases about to be enumerated, as if the bankrupt, tenant in tail, or entitled to a base fee, arising as already mentioned, were living:—1st, in case there shall be no protector at the bankrupt's death, in which case, the commissioner's disposition passes the fee simple; 2ndly, in case the bankrupt tenant in tail has left issue in tail, existing at the time of the disposition, and there is either no protector, or a protector, consenting or non-consenting, in which cases, the commissioner's disposition, there being a consenting protector, will pass the fee simple, or, there being a non-consenting protector, will pass a base fee; 3rdly, in case the bankrupt, entitled to a base fee arising as already mentioned, has left issue existing at the time of the disposition, which issue would have been inheritable, and there is either no protector or a consenting protector, in which case the commissioner's disposition passes the fee simple. The commissioner's disposition of the copyhold lands, not merely equitable, gives the effect of a surrender to the use of the disponent for the estate acquired by the disposition, and the disponent is entitled to admittance on paying the fines and fees. The mesne rents and profits of the lands over which the commissioner's power extends, until a disposition is made, or is ascertained to be necessary, are given to the assignees, who are armed with remedies for recovering arrears, enforcing covenants, and conditions, and ejecting tenants. The bankrupt clauses extend to Ireland, but deeds of disposition, and of consent, relating to such lands, must be enrolled in the Court of Chancery in Ireland, within six calendar months after execution (§§ 57 to 64, both inclusive).

The next set of enactments relate to money directed to be laid out in entailed lands.

It is a great equitable principle that money directed to be applied to the purchase of land is considered real estate, and is impressed with all the characteristics of realty, it is no longer, in the contemplation of equity, personalty, and, upon the death of the person entitled to it, it will descend to the heir at law, and cannot be distributed among the next of kin. Under the old law, the tenant in tail of this *quasi* land, having also the immediate remainder or reversion in fee vested in himself, could obtain payment of the entailed money by the decree of the Court of Chancery. But if the remainder or reversion were to another person, he could not have effected anything, either upon the *land*, because, it could not be the subject of a recovery until ascertained, or upon the *money*, which never could form the subject of a recovery. At length, by the 39 & 40 *Geo. III.*, c. 56, re-enacted with alterations by 7 *Geo. IV.*, c. 45, it was provided that in all cases where money under the control

of Chancery, or of which trustees were possessed, should be subject to be invested in the purchase of freehold or copyhold lands, to be settled in such manner that it should be competent for the persons who would be the tenants in tail thereof, either alone or with the owners of any particular preceding estates, therein to bar such estates tail and remainders, that it should not be necessary to have such money actually invested in land, but a court of equity, on the petition of the person who would be tenant in tail of the land, and the party having any antecedent estates (being adults, or *femes covert*, separately examined), might order such money to be paid to them, or applied as they should appoint. But the costly agency of the Court of Chancery, which always referred the petition to a Master, to inquire whether the petitioner were entitled to be tenant in tail, and whether he had encumbered the fund or not, not to say anything of the slowness of the process (for a vacation order was ineffectual, if the tenant in tail did not live till the second day of the ensuing term, nor would an order be made in term, unless there were time to suffer a recovery, during it), rendered this practice a grievance, accordingly the 70th section of this act abolished these statutes, and provided that as well lands of every tenure, of which the produce by sale is applicable to the purchase of lands to be entailed, as money so applicable shall, for the purposes of this act, be treated as the purchased lands, and be dealt with according to the disentailing provisions already stated. The fund, when constituted of land made saleable, not being copyhold, is to be dealt with as freehold, or being copyhold as copyhold; and when constituted of money is to be dealt with as *freehold* land. But leaseholds for years and money are to be treated, as to the person in whose favour the disentailing provision is made, as personal estate, and to be assigned by deed, enrolled as aforesaid, except in the case of bankruptcy, when the disposition is made by the commissioner, and completed by inrolment, as before provided in regard to lands not being copyhold (§ 71). With regard to bankrupts, the preceding provision is applied for benefit of the creditors, to a fund consisting of lands in Ireland, or money under the control of any Irish equity court, or held by any individuals as trustees in Ireland, where the bankrupt would be tenant in tail of the purchased land; but the deed of any commissioner or protector is to be enrolled in the Irish Court of Chancery, within six calendar months after the execution, where the fund is land; otherwise in the English Court of Chancery (§ 72).

It is to be observed, that the practice of requiring deeds to be acknowledged *before* inrolment, is not applicable to deeds inrolled under this act (§ 73). Every deed requiring inrolment, by which lands or money subject to be invested in the purchase of lands shall be disposed of under this act, shall take effect as if inrolment had not been required,

and shall have preference, except against a purchaser for valuable consideration, claiming under a subsequent deed previously inrolled (§ 74). It is, therefore, necessary for purchasers and mortgagees to enrol the deed under which they claim, without delay, and they should ascertain, by a proper search, that no conveyance, *prior* to their own, made by the tenant in tail, has been inrolled.

The Court of Chancery may regulate the fees to be paid for the inrolment of deeds, and for searches and office copies (§ 75). No order has been made; the charge for inrolling deeds is one shilling per folio. The Court of Common Pleas may regulate the fees to be paid for entries on court rolls, and for endorsements on deeds, and for taking consents and surrenders in cases of dispositions by tenants in tail of copyholds (§ 76.)

The fees by the Common Pleas rules of Hilary Term 1834 are as follows:—

s. d.

For the indorsements on the deed of the memorandum of production and memorandum of entry on court rolls to be signed by the lord's steward or deputy steward, each indorsement of memorandum, five shillings, together 10 0

For the entries on the court rolls of deeds and indorsements thereon, at per folio of seventy-two words.. 0 6

For taking the consent of each protector of settlement of lands .. 13 4

For taking the surrender of each tenant in tail of lands..... 13 4

For entries of such surrenders, or the memoranda thereof, in the court rolls, at per folio of seventy-two words..... 0 6

TAILZIE or ENTAIL, an arbitrary line of succession laid down by a proprietor, in substitution of a legal line of succession which has failed. *Scotch Word*.

TAIL AFTER POSSIBILITY OF ISSUE EXTINGUISHED, *tenant in*. This tenancy arises when lands are limited in special tail, and one of the parties from whom the issue are to proceed, dies without issue; as if lands are limited to a man and woman, and the heirs of their two bodies, and one of them dies without issue, the survivor is tenant in tail after possibility of issue extinct; it will also arise if there be issue born, and the issue die without issue. The estate must be created by the act of God, and not by limitation of the parties; divorce will not create the estate, but merely a joint estate for life.

Coke mentions four qualities of this estate, in which it is similar to that of mere tenant for life:—1st, it is liable to forfeiture; 2d, it will merge in an estate in fee or in tail; 3d, he in reversion or remainder shall be received upon his default; and, 4th, an exchange between him and mere tenant for life is good. He differs, however, from a mere tenant for life, in that he is punishable for waste. *Watk. Conv.* 102.

TAILAGE [*tailer*, Fr.], a piece cut out of the whole; a share of one's substance paid by way of tribute; a toll or tax. *Cowell*.

TAILLE, the fee which is opposed to fee simple, because it is minced or pared that it is not in his free power to be disposed of who owns it, but is, by the first giver, cut or divided from all other, and tied to the issue of the donee. In short, an estate tail.

TAKING UP DEAD BODIES for the purpose of dissection or otherwise, is a misdemeanour at common law, and punishable with fine and imprisonment.

TALES, a supply for men impannelled upon a jury or inquest, and not appearing or challenged, equal in reputation to those that were impannelled and present in court.

TALION, law of retaliation. See **LEX TALIONIS**.

Talis interpretatio semper fienda est, ut evitetur absurdum, et inconveniens, et ne judicium sit illusorium. 1 Co. 52.—(Interpretation is always to be made in such a manner, that what is absurd and inconvenient is to be avoided, lest the judgment be illusory.)

Talis non est eadem; nam nullum simile est idem. 4 Co. 18.—(What is like is not the same; for nothing similar is the same.)

Talis res, vel tale rectum, quæ vel quod non est in homine adtuno superstite sed tantummodo est et consistit in consideratione et intelligentia legis, dixerunt talem rem vel tale rectum fore in nubibus. Co. Lit. 342.—(Such a thing or such a right, which is not vested in a person then living, but merely exists and consists in the consideration and contemplation of law, such a thing or right they have deemed to be in the clouds, i. e., in abeyance.)

TALLAGERS, tax or toll-gatherers.

TALLAGIUM FACERE, to give up accounts in the Exchequer, where the method of accounting was by talleys.

TALLEY or **TALLY**, a stick cut into two parts, on each whereof is marked, with notches or otherwise, what is due between debtor and creditor. It was the ancient mode of keeping accounts; one part was held by the creditor, and the other by the debtor. The use of tallies in the Exchequer was abolished by 23 Geo. III., c. 82, and the old tallies were ordered to be destroyed by 4 & 5 Wm. IV., c. 15.

TALLIA, commons in meat and drink.

TALLY TRADE, a system of dealing by which shopkeepers furnish certain articles on credit, upon an agreement to pay the stipulated price by certain weekly or monthly instalments. *McCulloch's Commercial Dict.*

TALLIAGE. See **TAILLAGE**.

TANISTRY or **TANISTRIA**, an ancient municipal law or tenure, which allotted the inheritance of lands, castles, &c., to the oldest and most worthy and capable person of the deceased's name and blood, without any regard to proximity. This, in reality, was giving it to the strongest, and this naturally occasioned bloody wars in families; for

which reason it was abolished under James I. *Encyc. Lond.*

Tantum bona valent, quantum vendi possunt. 3 Inst. 306.—(Things are worth what they will sell for.)

TARE AND TRET, the first is an allowance in merchandize, made to a buyer for the weight of the box, bag, or cask, wherein goods are packed; and the last is a consideration in the weight, for waste in emptying and reselling the goods, by dust, dirt, breaking, &c.

Tare is distinguished into—

1. *Real* tare, i. e., the actual weight of the package.

2. *Customary* tare, its supposed weight, according to the practice among merchants.

3. *Average* tare, the medium deduced from weighing a few packages, and taking it as a standard for the whole. See **ALLOWANCE**.

TARIFF [*Span.*], a cartel of commerce, a book of rates, a table or catalogue, drawn usually in alphabetical order, containing the names of several kinds of merchandize, with the duties or customs to be paid for the same, as settled by authority, and agreed on between the several princes and states that hold commerce together. *Encyc. Lond.*

TATH, in the counties of Norfolk and Suffolk, the lords of manors claimed the privilege of having their tenants' flocks or sheep brought at night upon their own demesne lands, there to be folded for the improvement of the ground, which liberty was called by the name of the tath. *Spelm.*

TAU, a cross.

TAURI LIBERI LIBERTAS, a common bull, because he is free to all the tenants within such a manor, liberty, &c.

TAX [*tæg*, Wel., *taxe*, Fr. and Dut.], an impost; a tribute imposed; an excise; tallage. It is that money which a nation pays to its servants for the management of its business, and is granted and controlled by the House of Commons.

TAXATIO ECCLESIASTICA, the valuation of ecclesiastical benefices made through every diocese in England, on occasion of Pope Innocent IV. granting to King Henry III. the tenth of all spirituals for three years. This taxation was first made by Walter, Bishop of Norwich, delegated by the Pope to this office in 38 Hen. III., and hence called *taxatio norwicensis*. It is also called Pope Innocent's Valor.

TAXERS, two officers yearly chosen in Cambridge to see the true guage of all the weights and measures.

TAXING MASTERS, officers of the courts, who examine and allow costs.

TAXT-WARD, an annual payment heretofore made to a superior in Scotland, instead of the duties due to him under the tenure of ward-holding. Now abolished.

TEAM, **THEAME** [*tyman*, Sax., *to team* or *bring forth*], a royalty or privilege granted, by royal charter, to a lord of a manor, for

the having, restraining, and judging of bondmen and villeins, with their children, goods, and chattels, &c. *Glan. l. v., c. 2.*

TEDING - PENNY, TETHING - PENNY, TITHING - PENNY, a small duty or payment to the sheriff, from each tithing, towards the charge of keeping courts, &c., from which some of the religious were exempted by royal charter.

TEIND-MASTERS, those entitled to tithes.

TEINDS, tithes.

TEINLAND, thaneland: which see.

TELLER, one who numbers; a numberer; an officer in the Exchequer.

TELEGRAPHIÆ, written evidence of things past. *Blount.*

TELLWORE, that labour which a tenant was bound to do for his lord, for a certain number of days.

TEMENTALE or TENEMETALE, a tax of two shillings upon every ploughland; a decenary.

TEMPLAR, a student of the law.

TEMPLES, the two inns of court, thus called, because anciently the dwelling house of the Knights Templars. At the suppression of that order, they were purchased by some professors of the common law, and converted into *hospitia* or inns of court. They are called the *Inner* and *Middle Temple*, in relation to *Essex House*, which was also a part of the house of the templars, and called the *Outer Temple*, because situated without Temple-bar. *Encyc. Lond.*

TEMPORAL LORDS, the peers of the realm, the bishops not being in strictness held to be such, but merely lords of Parliament.

TEMPORALITY or TEMPORALS, secular possessions, not ecclesiastical rights, such revenues, lands, and tenements as bishops have had annexed to their sees by the kings and others, from time to time, as they are barons and lords of Parliament. *Cowell.*

TEMPORALTY, the laity; secular people.

TEMPTATIO or TENTATIO, a trial or proof.

Tempus pacis est quando cancellaria et alie curie regie sunt apertae, quibus lex fiebat cuicunque prout fieri consuevit. Utrum terra sit guerrina, necne, naturaliter debet judicari per recorda regis et eorum qui curias regis qui legem terrae custodiunt et gubernant, sed non alio modo. Co Lit. 249, b.—(Time of peace is when the Chancery and the King's other courts are open, in which justice may be rendered to every one as far as it has been accustomed to be done. Though the land is in a state of war, nevertheless justice ought naturally to be administered according to the King's records, and of those who, by the law of the land, watch over and preside in the King's courts, and in no other manner.)

TEMPUS PESSONIS, mast time in the forest, which is about Michaelmas to St. Martin's Day, November 11.

TENA, a coil worn by ecclesiastics.

TENANCY [*tenentia*, law Lat.], temporary possession of what belongs to another.

TENANCY IN COMMON, a joint estate, held

by two or more tenants, by several and distinct titles, but by unity of possession, because none knows his own severalty, and therefore they all occupy promiscuously. There is no unity of time, interest, or title. It may be created either by the destruction of two estates in joint-tenancy or coparcenary, or by special limitation in a deed. It may be dissolved by union of interest in one tenant, or by partition. *Watkins' Conveyancing*, 166.

TENANT, one that holds of another; one that, on certain conditions, has temporary possession and use of that which is in reality the property of another; correlative to landlord. *Encyc. Lond.*

TENANTRY, a body of tenants on an estate.

TENDE, to tender or offer.

TENDER, offer; proposal to acceptance.

A tender of satisfaction is allowed to be made in most actions for money demands. It needs not be made by the debtor personally to the creditor personally; it may be done through their authorized agents, and a tender to one of several joint creditors is sufficient. A tender must be absolute and unconditional, and the money must be actually produced at the time of the tender, unless that be dispensed with by the act of the creditor. No copper coin can be tendered when the debt is such an amount that it can be paid in silver or gold. No tender of silver coin above forty shillings is legal, and Bank of England notes are a legal tender, 56 Geo. III., c. 68; 3 & 4 Wm. IV., c. 98, § 6. A tender admits the contract and facts stated in the declaration; it is pleadable, but not with the general issue. See **PAYMENT OF MONEY INTO COURT**.

TENEMENT, any permanent property held by a tenant.

TENEMENTARY LAND, the outland of manors, granted out to tenants by the Saxon thanes, under arbitrary rents and services. *Spelm.*

TENEMENTIS LEGATIS, an ancient writ, lying to the city London, or any other corporation (where the old custom was, that men might devise by will lands and tenements, as well as goods and chattels), for the hearing and determining any controversy touching the same. *Reg. Orig.* 244.

TENENDUM, that clause in a deed wherein the tenure of the land is limited and created. Its office is to limit and appoint the tenure of the land which is held, and how and of whom it is to be held. See **DEED**.

TENENDAS, that clause of a charter by which the particular tenure is expressed.

Tenens nil facere potest, propter obligationem homagii, quod vertatur domino ad exheredationem, vel aliam atrocem injuriam: nec dominus tenenti è converso, quod si fecerint, dissolvitur et extinguatur homagium omnino, et homagii connexio et obligatio, et errit inde justum judicium cum venerit contra homagium et fidelitatis sacramentum, quod in eo in quo delinquent puniantur in persona domini, quod

amittat dominium, et in persona tenentis, quod amittat tenementum. Co. Lit. 65.—(The tenant, by force of the obligation of homage, can do no action which may operate to the disinheriting his lord, or doing him any atrocious injury; on the other hand, neither a lord to a tenant: for if they act in such a manner, they dissolve and extinguish altogether the homage and the connexion and obligation of homage; and when anything is done contrary to the homage and the oath of fidelity, it is just that the parties be punished through that very thing with regard to which they are guilty; in a word, that the lord lose his lordship, and the tenant his tenement, according as one or the other is guilty.)

TENENTIBUS IN ASSISA NON ONE-RANDIS, a writ that formerly lay for him to whom a disseisor had alienated the land whereof he disseised another, that he should not be molested in assise for damages, if the disseisor had wherewith to satisfy them. *Reg. Orig.* 214.

TENHEDED or **TIENHEOFED** [Sax.], a dean.

TENMENTALE or **TENMANTALE**, the number of ten men, which number, in the time of the Saxons, was called a decennary; and ten decennaries made what we call a hundred. Also, a duty or tribute paid to the Crown, consisting of two shillings for each ploughland. *Encyc. Lond.*

TENOR, sense contained; general course or drift. *Tenor* implies that a correct copy is set out, but the word *effect* alone implies that the substance only is set out.

Tenor est pactio contra communem feudi naturam ac rationem, in contractu interposita. Wright's Ten. 21.—(Tenure is a compact contrary to the common nature and reason of the fee, put into a contract.)

Tenor investituræ est inspiciendus. Ibid.—(The tenor of an investiture is to be searched into.)

TENORE INDICTAMENTI MITENDO, a writ whereby the record of an indictment, and the process thereupon, is called out of another court into the Queen's Bench. See **CERTIORARI**.

TENORE PRÆSENTIUM (the tenor of these presents), the matter contained therein, or rather the intent and meaning thereof.

TENSERIÆ, a sort of ancient tax or military contribution.

TENTATES PANIS, the essay or assay of bread. *Blount*.

TENTHS [*decimæ*], tithes; also, the tenth part of the annual value of every spiritual benefice, according to the valuation in the king's books, being that yearly portion or tribute which all ecclesiastical livings formerly paid to the Crown.

TENURE. Without tracing the origin of tenure into remote and unsatisfactory antiquity, it is clearly ascertained that there were originally two modes of holding land, viz.:—1. *Allodial* (from *los*, signifying *lot*), over which the owner having entire and irresponsible do-

minion could dispose of it at his own pleasure, or transmit it as an inheritance to his children. The land was also attachable to answer the owner's debts, and could also be made available for commercial enterprise. Such tenure was acquired upon the distribution of lands by *lot* among the Franks. 2. *Feudal* (from *od*, possession, or estate, and *feo*, wages, pay), over which the owner had but a conditional dominion acknowledging a superior lord, upon whose pleasure the tenure precariously depended, and nothing could be done without the consent of the lord. And this is the groundwork of *the feudal system*, which, displacing, in their turn, the laws imposed upon this country by the Saxons and the Danes, who, migrating from the forests of Germany (whence poured the barbarians onwards to the overwhelming of imperial Rome), established themselves and their laws in this kingdom, altogether obliterating the jurisprudence, as well as exterminating the race of the ancient Briton.

Amidst the conflicting opinions relative to the sources of our ancient laws, the better deduction appears to be from the primeval customs and codes of the German tribes, the *capitularia* of the Frank and Merovingian line of French kings, and particularly from the feudality of the province of Normandy. And although the notion of the feudal system may be traced among the Saxon institutions, its complete development did not take place until the twentieth year of the reign of William the Conqueror, just after the compilation of Domesday Book (from the Saxon *dom*, a judgment), which was a survey of all the lands in England, referring to the time of Edward the Confessor, as the Domesday Book of Alfred referred to the time of Ethelred. Thus the imperfect liberties of the Anglo Saxons were infringed, and the people reduced to a state of vassalage under the king or barons, and the lower orders to positive slavery.

The logomachy (for it is nothing more than a dispute about words), as to whether the Norman *acquired* or *conquered* this country, and the attempt to give to the word *conquest* the meaning of *acquisition* in a feudal sense, are mere idle ingenuities. The historical facts are these:—In the fifth century, a band of ferocious pirates seized on this country, and after committing the most atrocious cruelties, established themselves under the name of Saxons. They sacrificed the prisoners they took to their gods, to whom were dedicated groves of the tallest trees and the largest forests, and there they worshipped, without temple and without image. They believed in divination, and observed the flight of birds, the neighing of horses, &c., whence they conjectured as to future events; pecuniary commutation was received for every crime, and stated prices fixed for men's lives and members; private revenges were authorised for all injuries; the ordeal, corsned (or morsel of execration), and duel, were the methods of proof; their

Judges were tillers of the ground, assembled on a sudden, and deciding a cause from the wrangling of the parties; they were inclined to drunkenness, and gorged flesh from their infancy. This was a society very little advanced beyond the rude state of nature; violence, and not justice, prevailed; liberty was pretended, but the rich bandit, setting government at naught, revelled in his uncurbed depredation. At length, in the 11th century, the Normans, equally predatory in their habits, but much more polished and chivalrous in their manners, made incursions upon our coasts. They were certainly not so bloodthirsty and exterminating in their warfare as the Saxons. William, Duke of Normandy, headed the Normans, and invaded our island. On landing in the Bay of Pevensey, his foot failed him, and he stumbled on his hands. The superstitious troops beheld with dread this augury of failure. "*Mal signe est ci!*" in fearful murmurs rolled from wing to wing throughout the ranks. "No!" shouted William, springing on his feet, "I have taken possession of the country," holding up a clod of earth that he had grasped in his fall. The army cheered and pushed on to their victory at the battle of Hastings; hence William's surname of "The Conqueror," on ascending our throne as king.

Every historian of this period agree that the Norman's administration was upheld by arms; that his laws made distinctions between the English and his own troops, in favour of the latter; he totally disregarded both the interests and affections of the natives, and, as Hume remarks, in the fourth chapter of his history, "if there were an interval when he assumed the appearance of a legal sovereign, the period was very short, and was nothing but a temporary sacrifice, which he, as has been the case with most conquerors, was obliged to make of his inclinations to present policy. Scarce any of those revolutions, which, both in history and common language, have always been denominated conquests, appear equally violent, or were attended with so sudden an alteration both of power or property." After showing the difference between the Romans and the Normans in treating their subjugated possessions, the historian thus expresses himself: "*Except* the former conquest of England by the Saxons themselves, who were induced by peculiar circumstances to proceed even to the extermination of the natives, it would be difficult to find in all history a revolution more destructive, or attended with a more complete subjection of the ancient inhabitants. Contumely seems even to have been wantonly added to oppression, and the natives were universally reduced to such a state of meanness and poverty, that the English name became a term of reproach, and several generations elapsed before one family of Saxon pedigree was raised to any considerable honours, or could so much as attain the rank of baron of the realm." If, upon reading this period of our history, any opinion

be entertained other than that the term "*conquest*," as applied to the Norman establishment in this country, means, and literally was, warlike subjugation, by force of superior military tactics, why then there is an end of the argument, and further remark is useless.

The principles of the feudal system were based then upon conquest, the hordes from Celtic Europe became soldiers of fortune, and after subduing a country, they instituted a regular plan of military confederation, the provisions of which had for their object the preservation of the spoils of war, and the permanence of victory. Thus, large districts of land were given to the superior officers by the conquering general, and these districts were again granted in smaller allotments to the inferior officers and most deserving soldiers. The wisdom which the northern invaders evinced in these institutions, as well as the valour they displayed in the defence of their acquisitions, alarmed the princes of Europe, who, in order to preserve their dominions, adopted a similar policy. Their subjects also fell in with these changes, because, by such arrangements, the people would acquire the protection of some powerful lord, without which, in those times of anarchy and confusion, it was scarcely possible for an isolated individual to preserve either his liberty or his property. As allodial land was on the whole much more desirable than feudal, such a conversion would appear very surprising, unless for the reason just mentioned; add to which, that the composition or fine for the commission of a crime against a feudatory, was much greater than that for a person who held his land by an allodial tenure, and you have the chief inducements for the change. Thus nearly all allodial property was destroyed, and feudalism became the law of nations in the western world. Small tracts of allodial lands, however, are to be found in Germany, France, Holland, and even in Normandy, and some in Scotland. It should be remarked, that where allodial tenure was converted into feudal, such lands were from the beginning hereditary, which was not the case where the feudal law was established by the iron right of conquest.

The following fictitious maxim arose out of feudalism, that all lands in this kingdom were originally granted by our kings, and held mediately or immediately of the king, as lord paramount, in consideration of certain services to be rendered by the holder. There is then no allodial land in England. Those who held immediately from the king, were called tenants *in capite* (in chief), which was the most honourable tenure. This was of two kinds, either *ut de honore*, where the land was held of the king as proprietor of some honour, castle, or manor, or *ut de coronâ*, where it was held of him in right of the Crown itself. When these tenants granted portions of their lands to inferior persons, they were called *mesne* (middle)

lords or barons, with regard to such inferior holders, who were styled tenants *paravail*, the lowest tenant, because he was supposed to make avail or profit of the land. The lands were called feuds (*feoda*), either proper, which were purely military, given *militie gratia*, without price, to persons duly qualified for military service; or improper, which did not, in point of acquisition, services and the like, strictly conform to the nature of a mere military feud, such as those that were sold or bartered for any equivalent, or granted free from all circumstances, or in consideration of any certain services.

In modern phraseology, the thing holden is called a *tenement*, the holder of it a *tenant*, and the manner of holding it a *tenure*. Lay tenements were divided into two great classes, viz., frank-tenement or freehold, and villenage.

Frank-tenements were subdivided into *knight service* and *free socage*.

Knight service proper or *tenure in chivalry*, was the original and most honorable species of tenure, created by a determinate quantity of land, called a knight's fee. Its extent was twelve plough lands, that is, as much land as could be reasonably ploughed in one year by twelve ploughs, or, according to other authorities, 800 acres of land, and others say 680, and its value in those times was twenty pounds per annum. This tenure was granted by words of pure donation, *dedi et concessi* (I have given and granted); transferred by investiture, i. e., by a solemn and public delivery of the very land itself by the lord to the vassal, in the presence of the other vassals, and perfected by homage and fealty; *homage* being the acknowledgment of tenure, and *fealty* the solemn oath, made by the vassal, of fidelity and attachment to the lord.

The holder of a knight's fee was bound to attend the lord to the wars on horseback, armed as a knight, for forty days in every year, if called upon, and this attendance was his rent or service for the land he held; but if he had only half a knight's fee, he attended only twenty days, and so on in proportion. Seven other services were afterwards superinduced upon this tenure, viz.:—

1. Aids, which were three, to ransom the lord's person, if taken prisoner; to make the lord's eldest son a knight, attended with great pomp and expense, when he was fifteen years of age; and to marry the lord's eldest daughter, by giving her a portion.

2. Relief, which was a fine or composition with the lord for taking up the tenure, lapsed or fallen in by the death of the last tenant. The fine was 100s., payable if the heir, at his ancestor's death, were of age.

3. *Primer seisin* was a right which the king had, when any of his tenants *in capite* died, possessed of a knight's fee, to receive from the heir (if he were of age) a year's profits of the lands, if they were in immediate possession, and half a year's profits, if they were expectant on a life.

4. Wardship of the heir, if under the age of twenty-one, being a male, or fourteen, being a female, belonged to the lord, who was then called the guardian in chivalry. He had the custody of the heir, together with the lands (without accounting for the profits, and subject only to the infant's bare maintenance), till the age of twenty-one (males), and sixteen (females). The heir-male was supposed to be incapable to perform knight service till twenty-one; but the female was supposed to be capable of marrying at fourteen, and then her husband might perform the service. When the heir-male attained twenty-one, or the female sixteen, he or she might sue out a writ of *ousterlemain* (*amovere manum*), in order to get the lands out of the guardian's hand, the fine upon which was one half year's profits of the land. In order to ascertain these profits which arose to the Crown, the court of awards and liveries was erected by the 32 Hen. VIII., c. 46.

5. Marriage, which was the right of disposing the infant ward in matrimony by the guardian in chivalry. If the infant refused the person tendered, he or she forfeited the value of the marriage, i. e., so much as a jury would assess, or any one would give to the guardian for such an alliance; or if the infant married without the guardian's consent, the fine was double the value of the marriage; but this last fine did not extend to heirs female.

6. Fines due to the lord for every alienation, i. e., whenever the tenant had occasion to make over the land to another. One-third the yearly value was paid for the lord's license; but if the tenant aliened without the lord's license, a full year's value was the fine.

7. Escheat, which is a species of reversion; for if the tenant died without heirs of his blood, or if he had committed treason or felony, the mutual bond between the lord and such tenant was dissolved, and the tenure being determined, the land resulted back to the lord who gave it. But the statute 3 & 4 Wm. IV., c. 106, § 10, enacts, that after the death of a person attainted of treason or felony, the attainder, i. e., when sentence is pronounced upon the conviction, shall not prevent any person from inheriting land who would have been capable of inheriting the same by tracing his descent through such relation, if he had not been attainted, unless such lands shall have escheated in consequence of such attainder before the 1st January, 1834, when the law was, that the attainder of a person abolished every inheritable quality, by which he was rendered not only incapable of himself inheriting, or transmitting his own property by heirship, but he also obstructed the descent of his lands to his posterity, in all cases where they were obliged to derive their title through him. *Grand serjeanty* was another species of tenure, which, some writers think, was superior to knight service, whereby the tenant was bound, instead of serving the

king *generally* in the wars, to do him some special, certain, and honorary service in person, as to be marshal of his host, or high steward of England, or to carry his banner or his sword, or to be his butler, champion, or other officer at his coronation. In most other respects it was similar to knight service, only he was not bound to pay aid or escuage; and when tenant by knight service paid 5*l.* for a relief, tenant by grand serjeanty paid one year's value of his land, were it much or little.

Cornage tenure was a species of grand serjeanty. The service was to wind a horn when the Scots or other enemies poured over the borders, in order to warn and rouse the king's subjects to arms and resistance.

These tenures were held by personal and uncertain services, which, at length, becoming inconvenient and troublesome, were commuted into uncertain monetary assessments, called *escuage* or *soutage*, from *soutum*, then a well known denomination for money, as it had previously been for a shield. These scutages became the groundwork of subsidies, which were afterwards levied by our kings upon the people, to defray the expenses of their wars, out of which the land-tax of the present day sprung. Thus the gallant knight degenerated into the tame and overtaxed slave, the national militia into a band of mercenaries, and the nobles, who fought for the sovereign, dwindled into crafty adventurers, enriching themselves by means of systematic extortion, while, during peace, these feudal barons ravaged their neighbours, oppressed the commoners, and were, in fact, bandits and robbers.

At last these military tenures, together with all their grievances, were destroyed at the Restoration. The Statute 12 Car. II., c. 24, enacted, "that the court of wards and liveries, and all wardships, liveries, *primer seisin* and *ousterlemains*, values, and forfeitures of marriages, by reason of any tenure of the king or others, be totally taken away. And that all fines for alienations, tenures by homage, knight service, and escuage, and also aids for marrying the daughter or knighting the son, and all tenures of the king *in capite*, be likewise taken away. And that all sorts of tenures, held of the king or others, be turned into free and common socage, save only tenures in frankalmoign, copyholds, and the honorary services (without the slavish part) of grand serjeanty; and that all tenures which shall be created by the king, his heirs or successors, in future should be free and common socage."

The other subdivision of frank tenement is, *free socage* [*soca*], which, most probably, means plough service. It is distinguished from knight service in this respect, that it is held by a certain determinate but honorable duty; whereas, we have seen, that the tenure in chivalry or knight service was uncertain, precarious, and indeterminate. These free socage tenures are said by the learned to be

the relics of Saxon liberty, which were left untouched by the oppressive hand of the Norman.

The three species of free socage tenures are, *petit serjeanty*, *tenure in burgage*, and *gavelkind*.

1. *Petit serjeanty* [*parva serjeantia*], greatly resembles grand serjeanty, for as *this* is a personal service, *that* is a rent or render, both tending to some purpose relative to the king's person. The service in *petit serjeanty* is the rendering annually to the king some small implement of war: as a sword, a buckler, a bow without a string, or the like. Both the tenures in serjeanty must be held from the Crown. The lands and property, which were granted to the Dukes of Marlborough and Wellington for their brilliant military services, are held in *petit serjeanty*, each rendering annually a small flag or ensign, which is deposited in Windsor Castle.

2. *Tenure in burgage* [*burgus*] is, where houses or lands, which were formerly the site of houses in an ancient borough, are held of some lord by a certain rent. There are a great many customs affecting these tenures, the most remarkable of which is the custom of *borough English*, evidently of Saxon origin, and so named to distinguish it from the Norman customs. It is supposed to be derived from the Tartars, and may be a remnant of the pastoral state of the Germanic barbarians described by Cæsar and Tacitus. By this custom, then, the youngest son, and not the eldest, succeeds to the burgage tenement on his father's death, and it is based upon this reason, because the youngest son, by reason of his tender age, is not so capable as the rest of his brethren to help himself. Among the pastoral tribes, the sons, as soon as they attained the proper age, migrated from the paternal habitation, with an allotment of cattle, to seek a residence elsewhere, the youngest son usually continued with his father, and thus became the heir to his house. The vulgar notion that this custom arose out of the right of concubinage which the lord had with his tenant's wife on their wedding night, and that, therefore, the land descended not to the eldest son, but to the youngest, who was with greater probability the true child of the tenant, is altogether exploded, for there is no evidence of such a right having ever existed in England, although it certainly seems to have prevailed in Scotland until it was abolished by Malcolm III. (*Reg. Mag. l. 4, c. 31*), who commuted it for a fine, payable on the tenant's marriage, which payment is now known as *marcheta*.

This customary descent is opposed to descent at common law. It is confined to the youngest son only; if he died without issue, the youngest brother shall not inherit the land, *unless* it be by some special custom (supported by the two essential qualities of time immemorial and peaceable usage), but the inheritance will

descend according to the common law, for customs must always be taken strictly, and, therefore, if the youngest son die leaving nephews only, the eldest shall take, but if he die during his father's lifetime, his lineal representative, if any, although a daughter, shall take, even if the lands to which such a custom is annexed, be purchased after such youngest son's death. 1 *Roll's Abr.* 624, pt. 2; *Salk.* 224.

Another custom is frequently annexed to tenure in burgage: viz., that the widow shall have *all* her husband's lands in dower, but such a custom is special, and not a general custom of borough English. It may be proper to observe, that this custom exists in several cities and ancient boroughs, and districts, of smaller or larger extent, adjoining to them, in different parts of the kingdom.

3. *Gavelkind* [*gyfe-eal-kyn*, given to all the kindred]. The principal qualities of this tenure are as follows:—that the tenant can convey his land at fifteen years of age, and that the land descends to all the sons together, and in default of them, to all the daughters together, and in default of lineal descendants, it descends to collaterals of the remotest degree, in like manner as coparceners, and this was, indeed, the original canon of descent all over England until the feudal law of primogeniture superseded it. The special customs are, that the wife is dowable out of one half instead of a third of the land, and that the husband will be tenant by the courtesy, whether there be issue born or not, but only of one half so long as he remains unmarried. This custom principally prevails in Kent, where success attended the struggles for the preservation of the ancient liberty of this kingdom, and it was preserved to the Kentish-men by the Conqueror, in order to conciliate their favour, and suppress the tumults which were threatening him on all sides immediately after the battle of Hastings. It is also met with, in a modified manner, in several copyhold lands in various parts of the kingdom.

The nature of these free socage tenures is feudal, and this will more plainly appear from a brief comparison of their incidents with those of tenure in chivalry. They were both held of superior lords, they were both subject to services (one being held by uncertain, the other by certain services, as we have seen), and the oath of fealty. They were subject to aids, *primer seisin*, marriage, and fines for alienation, all which the Statute of Charles II. abolished. Free socage tenures are subject to something very similar to relief, which the ancient lawyers will not allow to be properly a relief. It is one year's rent, be the same either small or great, which the heir pays to the lord upon the death of the tenant, and this is due even though the heir be under age, which was not the case in knight service, and the reason given is, because the lord had no wardship over him. The difference of the wardship is this:—the lord never had it, because, in free socage tenure, no military or other personal

service being required, there was no occasion for the lord to take the profits, in order to provide a proper substitute for the infant tenant; but the infant's nearest relation, to whom the *immediate* inheritance can by no possibility descend, is the guardian in socage, and he has the custody of the land and the infant's person until he be fourteen. For instance, if the land descended from the father of the infant, his uncle by the mother's side cannot immediately inherit, and therefore he may be guardian. Our laws have deemed it proper, in order to avoid every suspicion of temptation, not to intrust the person of an infant to the custody of his possible heir. This wardship ceases at fourteen, and the heir may eject the guardian, and call him to account for the rents and profits. He was then capable of choosing a guardian for himself, but in order to prevent an improvident choice, the 12 *Car. II.*, c. 24 (quoted before), enacted, that it should be in the power of any father by will to appoint a guardian till his child should attain twenty-one. And if no such appointment be made, the Court of Chancery will frequently interpose, and appoint a guardian, to prevent an infant heir from improvidently exposing himself to ruin.

The other great class of tenements is *villennage*, which is subdivided into *pure* and *privileged villennage*.

Pure villennage was the origin of the present copyhold tenures, or tenure by copy of court roll, at the will of the lord, to understand which, we will enquire concerning the original nature of manors.

A manor, from the Norman French word *mesner*, to guide, was a district of land, held by a superior lord, who, keeping in his own actual occupation so much of it as was necessary for the use of his family (which part was, therefore, called *terre dominicales* or *demesne lands*), distributed the remainder or tenemental lands among sundry tenants, who held by one of two different tenures. One of these tenures was called *book-land* or *charter-land*, which was held by deed under certain rents and free services, and was very similar to free socage lands: the other species was called *folk-land*, which was not held by deed, but distributed among the common people at the lord's pleasure, who might resume the occupation of such lands at his discretion. These tenants, denominated serfs and villeins, and the females, neifes, were in a condition of absolute slavery, resembling the Spartan *helotes*, the boors in Denmark, and the *traals* or slaves in Sweden. The lords had the power of enfranchising them by manumission, either express or implied.

The two material causes of a manor were, therefore, *demesne* and *services*. Some part of the manor, termed the lord's waste, remained uncultivated, and was common both to the lord and his tenants. The lord of a manor was empowered to hold a court, called a court baron, where speedy and effectual justice was administered to all the tenants. This court is said by some

authorities to be an inseparable ingredient of a manor, and that if the number of suitors should so fail as not to leave sufficient to make a jury, or homage, that is, two tenants at least, the manor itself is lost; but, by other authorities, it would seem that the manor itself may continue to exist, though the power of holding a court baron may be gone, for want of a sufficient number of suitors.

Thus copyhold tenures are of mean but ancient descent, for copyholders were the villeins, who, by continuous encroachments upon their lords, established, at length, a customary right to their lands, which had been held absolutely at their lords' will. They now call themselves tenants by copy of court roll, because the admissions into their lands are entered on the manor rolls, and the copies of such entries are witnessed by the steward. The Statute 12 Car. II., c. 24, virtually abolished tenure in villenage, but reserved copyholds, which is a mitigation of the state of villenage; for though their persons are enfranchised, their lands remain subject to the same servile conditions and forfeitures as before, though these services are almost universally commuted for pecuniary rents.

The principles which mainly support copyholds are: 1st, that the land be parcel of and situate within the manor under which it is held; and 2nd, that it have been demised or demiseable by copy of court roll immemorially. This immemorial custom is the very life of these tenures. Some customs permit the heir to succeed to the lands on his ancestor's death, when such tenures are called copyholds of inheritance; and these are liable to reliefs, escheats, wardships, now governed by 1 Wm. 4., c. 65, and fines due on the change of the lord by death, or the change of the tenant in any way, or for a license empowering the tenant to demise, or do any other act which, without such license, would cause a forfeiture. These fines are sometimes arbitrary, and in other manors fixed by custom, but at all events they must not exceed two years' improved value of the lands, without deduction of land tax; others are only enjoyed for life, which are subject to fealty, and services usually rendered in rents. Both species of copyholds are liable to heriots (a Danish custom, whose origin is merely conjectural). A heriot is the render of the best beast or other personal chattel (according to the particular custom) to the lord on his tenant's death. They are usually divided into two sorts:—heriot-service and heriot-custom; the former is due upon a special reservation in a lease of lands, which is, in effect, a rent; the latter arises from no special reservation, but entirely depends upon custom.

Privileged villenage, sometimes called *vil-
lein-socage*, is such lands as have been held of the Crown from the Conquest. This is an exalted species of copyhold, held according to custom, and not according to the mere will of the lord. It is still subsisting under the name of tenure in *ancient demesne*,

which consisted of those lands or manors that appeared in Domesday Book, to have been actually in the possession of the Crown in the reign of Edward the Confessor or William the Conqueror. These tenants, although their services were of a base original, were esteemed highly privileged villeins, for they could not be compelled to relinquish their lands at the will of their superior, *et ideo dicuntur liberi*. They had also a peculiar court of their own, in which to contest their rights. This tenure was not abolished by the 12 Car. II., c. 24.

Tenure in ancient demesne are of three kinds:—

1. Tenures in ancient demesne (properly so called), which is a free holding by grant from the Crown. The tenants are bound, in respect of their lands, to perform some of the better sort of certain villein services, which are now commuted into money rents.

2. Privileged copyholds, customary freeholds, or free copyholds, are held of a manor, which is ancient demesne, according to the custom of the manor, but not at the lord's will. These lands are in fact copyholds, and therefore the term customary freeholds is not strictly correct; for although the tenants have an interest nearly as good as freehold, yet they have not a freehold interest.

3. Copyholds of base tenure are lands of a manor, which is ancient demesne, but held merely at the lord's will.

The old Saxon ecclesiastical tenures, which were continued under the Norman Revolution, are the two following:—

1. *Frankalmoign* [*libera eleemosyna*, or free alms], by which religious corporations and their successors for ever hold lands of the donor, without any service other than the praying for the souls of the donor and his heirs. Such tenants, however, had to discharge the *trinoda necessitas*, i. e., repairing the highways, building castles, and repelling invasions; but this was for the most part voluntary, as the lord had no other remedy for non-performance but by complaint to the ordinary or visitor. A lay person cannot be a tenant in *frankalmoign*. The ancient monasteries and religious houses held their land by this tenure, and so do a great many ecclesiastical and eleemosynary foundations at the present day; but the service of praying for the souls of the donors has been discontinued, and other services introduced more conformable to the doctrines of the established Church of England.

2. *Tenure by divine service*, to which is annexed some special divine service, as, to sing so many masses, to distribute a certain sum in alms, &c., which were contradistinguished from *free alms*; for if unperformed, the lord can distrain without complaining to the visitor.

The statute 12 Car. II., c. 24, excepts these spiritual tenures from abolition, so that many are now subsisting, but only the Crown can create them in the present day.

The feudal system then consolidated our English tenures, and preserved the rights of

property during the chivalrous ages. This system, in order that its beneficial effects might be seen, ought to be compared with the state of society preceding it, and not with the commercial civilization of modern times. The great cause of feudality was the feeble administration of that vast and barbarous empire, which was jumbled together by the children of Charlemagne. It was the confusion and anarchy arising from this overgrown and disconnected military alliance, which required the bands and fetters of the feudal tenure to bind in mutual dependence, so as to enforce the common rights and duties of social intercourse. It resisted the ambitious aim of universal despotism, and fostered, even in its slavish ceremonies, the notions of commercial liberty. History tells us that the feudal policy protected from the iron hand of the warrior, the sacred institutions of civil freedom; that it restrained the desolating tyranny of the Conqueror, by interposing the barriers of a free and brave nobility, as an invincible protection to a poor and disorganised people. The spirit of liberty, and the notions of private right can be distinctly traced in the limited services of the vassal; the mutual obligations between the lord and his tenant; the consent required in order to effect legislative changes; and, above all, in that security which the people experienced in the administration of justice by their peers. Feudality was also a school of moral discipline. The dissolution of the Roman empire fostered the vices of falsehood, treachery, and ingratitude. Now the very essence of the feudal tenure was destructive of every violation of faith, which was severely and promptly avenged, and branded by universal infamy. And the trial by peers was peculiarly calculated to promote a keener feeling, a quicker perception of moral and legal obligations. But since private wars were perpetuated by these institutions, they did not promote the peace and good order of society. The feudal system was, therefore, adverse to the accumulation of wealth, and the improvements of those peaceful arts which mitigate the evils and abridge the labours of mankind.

When the feudal baron first raised his banner, he lived amidst his vassals; he was their patron and defended them; but at length, by the various changes of property, and the centralization of a parliament, the baron became separated from his dependents, his protection became more fictitious than real; voluntary associations of the people were formed, and thus the force of the feudal connection became weakened.

The peaceful art of agriculture, and the Roman jurisprudence, preserved to us by the pandects of Justinian, which were discovered in 1130, effected the *personal* and *civil* capacities of the people; for they began to erect corporations, endowed with privileges and separate municipal government. Hence the tyranny of the barons was opposed, and their violent system of ruling broken down. At length, commerce arose,

and the efforts of man expanded to its living power. Commerce, even from its dawn to the present moment, has worked wonders throughout this peopled globe. It has embellished the amenities of our social being, it has ameliorated the condition of the people, it has elevated the dignity of intellect, it has liberalised the manners of mankind. The history of commerce teems with records of these beneficent tendencies. The information gained by foreign intercourse created new thoughts, and luxury demanded new food, new pleasures. A new agent was thus evoked, and trade was the great function of correspondence. It displaced physical strength, it created mental competition, and science went into the ascendant. The fetters of feudalism were unloosed, and its vast influence was at an end, though some of its elements yet remain in a very modified state, in the laws of real property. But while we eulogise commerce, there is one evil that we are in danger of falling into. We must beware of placing in the market all the arts and sciences, the intellectual and moral attributes, as well as the produce of manufacture and agriculture. We must be cautious not to plunge ourselves altogether into the intoxicating and virtue-destroying waters of avarice!

"The feudal customs," said Lord Kames, "ought to be the study of every man who proposes to reap instruction from the history of modern European nations: because among these nations public transactions, not less than private property, were, some centuries ago, regulated by the feudal system. Sovereigns formerly were many of them connected by the relation of superior and vassal. The King of England, for example, by the feudal tenure, held of the French king many fair provinces. The King of Scotland, in the same manner, held many lands of the English king. The controversies among these princes were generally feudal; and without a thorough knowledge of the feudal system, one must be ever at a loss in forming any accurate notion of such controversies, or in applying to them the standard of right and wrong."

An endeavour has been made to sketch, briefly but clearly, the effects of the feudal system upon the tenures of property. The modern freehold and copyhold tenures were severally derived in this way. From the military tenures, which were parcelled out among the martial followers of the chief, and dedicated to arms and ambition, and also from the free socage tenures, have proceeded the *freeholds* of the present day; while from the villenage tenures, which attached the tenants to the soil, rather by the chain of slavery than by the bond of tenure, the *copyholds* were derived. The main distinction between these two species of tenure is this:—

Freehold property is held independently, while copyhold is held by the will of some superior lord, which will is regulated according to custom.

The result, then, of this subject may be thus tabularized :—

LAY TENURES.

1. Frank tenement or freehold.	1. Military tenures (abolished, <i>except</i> grand serjeanty, and reduced to free socage tenures).	1. Knight service proper, or tenure in chivalry. 2. Grand serjeanty, 3. Cornage.
2. Villenage.	2. Free socage, or plough service.	1. Petit serjeanty. 2. Tenure in burgage. 3. Gavekind.
	1. Pure villenage (whence copyholds at the lord's (nominal) will, which is regulated according to custom). 2. Privileged villenage, sometimes called villein socage (whence tenure in ancient demesne, which is an exalted species of copyhold, held according to custom, and not according to the lord's will), and is of three kinds.	1. Tenure in ancient demesne. 2. Privileged copyholds, customary freeholds, or free copyholds. 3. Copyholds of base tenure.

SPIRITUAL TENURES.

1. Frankalmoign, or free alms.

2. Tenure by divine service.

TERCE, thirds; dower. *Scotch Word*.

TERMOR, he that holds lands or tenements for a given number of years or for life.

TERMS, the times during which the superior courts at Westminster are open to all that complain of wrong, or seek their right by course of law.

There are four terms in each year, Hilary, Easter, Trinity, and Michaelmas, which are fixed as follows : Hilary Term begins on the 11th and ends on the 31st January; Easter Term begins on the 15th April and ends on the 8th of May; Trinity Term begins on the 22nd of May and ends on the 12th June; and Michaelmas Term begins on the 2nd and ends on the 25th of November. 11 Geo. IV. and 1 Wm. IV., c. 70, § 6, and 1 Wm. IV., c. 3, § 3. If a term end on a Sunday, according to these acts, Monday shall be taken to be the last day. There is no provision when the first day of term begins on a Sunday, and though no judicial act can be done till the following day, Sunday will perhaps be considered the first day of term for purposes of computation.

Hilary and Trinity Terms are called issuable terms; because in them the issues are joined, and the records made up for trial at the Lent and Summer assizes: Easter and Michaelmas are the non-issuable terms.

Our university terms are different from the law terms.

TERMS FOR YEARS. An estate for years is where lands are granted for a term of years, agreed upon by the parties, and if the agreement be for half or quarter of a

year, or even for a shorter duration, the holder will be called a tenant for years, for a year is the shortest period of which the law will, in this case, take notice.

This estate is denominated a *term*, because its duration is absolutely defined. An estate for years relates only to the *possession* and not the *seisin* of the land. The law calls it a chattel interest, which descends to the executor. It is not a freehold though it be for one thousand years. Hence, if it be wished that A. should enjoy certain property while he lives, it should be ascertained whether it is intended that A.'s estate should have the qualities of a freehold or not, if it be, the estate should be limited to A. and his assigns *during his life*, but if not, it should then be limited to A. and his assigns *for a certain number of years, if the said A. shall so long live*. In the former case, A. would have a freehold, in the latter, only a chattel interest. The word "term" signifies the estate itself, which is granted, and not merely the period of its duration; the *term*, therefore, may expire, during the continuance of the *time*, by surrender or forfeiture.

The bare grant or agreement does not vest a complete estate for term of years in the grantee, but only gives him a right of entry on the lands, called his interest in the term, or *interesse termini*, which is an executory interest, and may be granted over, assigned, or released. When the grantee has actually entered, the estate is then, and not before, completely vested in him.

The incidents to this estate are the follow-

ing: 1. The tenant is entitled to the same estovers as a tenant for life, unless restrained by special agreement. 2. He cannot commit waste. 3. He is entitled to emblements where the term for years depends upon an uncertainty. 4. His estate is subject to all kinds of debts. 5. He may assign his whole interest in the estate, or underlease a part of it, unless restrained by covenant. A surrender may either be by deed duly executed, or it may arise by operation of law, as the acceptance of another interest incompatible with the first. If the tenant have underleased, he cannot by surrendering his original lease destroy the underlease, for it would be positively unjust to frustrate his own grant. But if the original lease be rendered void, by breach of any of its conditions, or an entry be made in consequence of such breach, the underlease will then be defeated, otherwise the original grantee might, by granting an underlease, deprive the original grantor of the benefit of the conditions contained in his grant. 6. When the term for years vests in the person who is seized of the freehold, by which there is an union of the two interests in the same person at the same time, and there is no intervening estate (unless it be an *interesse termini*) between the term and the freehold, the term merges in the freehold and becomes extinct. 7. The estate is forfeited by the tenant attempting to create a greater interest than he has.

By 8 & 9 Vict., c. 112, every satisfied term which, on the 31st December, 1845, either by express declaration or by construction of law, was attendant on the inheritance, absolutely ceased: so has every term which has been satisfied since that day, and which, either by express declaration or by construction of law, has since that day become attendant on the inheritance; and so will cease every term which shall hereafter be satisfied, and so become attendant on the inheritance. With this only exception, that every term which was so attendant by express declaration on the 31st December, 1845, is to afford to every person the same protection against every incumbrance, charge, estate, right, action, suit, claim, and demand, as it would have afforded to him had it continued to subsist, but had not been assigned or dealt with after the 31st December, 1845.

Terminus annorum certus debet esse et determinatus. Co. Lit. 45.—(A term of years ought to be certain and determinate.)

Terminus et feodum non possunt constare simul in una eademque persona. Plow. 29.—(The term and the fee cannot both be in one and the same person at the same time.)

TERRA, arable land.

TERRA AFFIRMATA, land let to farm.

TERRA BOSCALIS, woody land.

TERRA CULTA, cultivated land.

TERRA DEBILIS, weak or barren land.

TERRA DOMINICA or INDOMINICALA, the demesne land of a manor.

Terræ et tenementa debitoris regis ad quascunque manus quocunque titulus devenerunt, post debitum regis inceptum, regi tenentur, si non aliunde satisfacere possit. 2 Inst. 19.—(The lands and tenements of the king's debtor, by whatever title or into whatever hands they may come after the contracting of the debt, are bound to the king if he cannot be satisfied in any other manner.)

Terra manens vacua occupanti conceditur. 1 Sid. 347.—(Land lying unoccupied is given to any occupant.)

Terra sterilis, ex vi termini, est terra infœcunda, nullum ferens fructum. 2 Inst. 665.—(Sterile land is by force of the term barren, bearing no fruit.)

Terra transit cum onere. Co. Lit. 231.—(Land passes with its incumbrance.)

TERRA EXCULTABILIS, land which may be ploughed.

TERRA EXTENDENDA, a writ addressed to an escheator, &c., that he inquire and find out the true yearly value of any land, &c., by the oath of twelve men, and to certify the extent into the Chancery. *Reg. of Writs*, 293.

TERRA FRUSCA, or FRISCA, fresh land, not lately ploughed.

TERRA HYDALA, land subject to the payment of hydage.

TERRA LUCRABILIS, land gained from the sea or enclosed out of a waste.

TERRA NORMANORUM, land held by a Norman.

TERRA NOVA, land newly converted from wood ground to arable.

TERRA PUTURA, land in forests, held by the tenure of furnishing food to the keepers therein.

TERRA SABULOSA, gravelly or sandy ground.

TERRA TESTAMENTALIS, gavelkind land, being disposable by will.

TERRA VESTITA, land sown with corn.

TERRA WAINABILIS, tillable land.

TERRA WARENNATA, land that has the liberty of free warren.

TERRAGES, an exemption from all uncertain services.

TERRARIUS, a landholder.

TERRE-TENANT, PERTENANT, he who is in the actual possession and enjoyment of land.

TERRIER, or TERRAR, a register or survey of lands.

TERRIS BONIS ET CATALIS REHABENDIS POST PURGATIONEM, a writ for a clerk to recover his lands, goods, and chattels, formerly seized, after he had cleared himself of the felony of which he was accused, and delivered to his ordinary to be purged. *Reg. Orig.* 68.

TERRIS ET CATALIS TENTIS ULTRA DEBITUM LEVATUM, a judicial writ for the restoring of lands or goods to a debtor that is distrained above the amount of the debt. *Reg. Judic.* 38.

TERRIS LIBERANDIS, a writ that lay for a man convicted by attain, to bring the record and process before the king, and take a fine

for his imprisonment, and then to deliver to him his lands and teneiments again, and release him of the strip and waste. *Reg. Orig.* 232; also, it was a writ for the delivery of lands to the heir, after homage and relief performed, or upon security taken that he should perform them. *Ibid.* 293.

TERRITORY OF A JUDGE, the extent of a Judge's jurisdiction.

TEST, to bring one to a trial and examination.

TEST ACT, 25 Car. II., c. 2, by which it was provided that all persons having any offices, civil or military (with the exception of some few of an inferior kind), or receiving pay from the Crown, or holding a place of trust under it, should take the oaths of allegiance and supremacy, and subscribe a declaration against transubstantiation, and also receive the Sacrament of the Lord's Supper according to the usage of the Church of England. The provisions of the Test Act were afterwards extended by 1 Geo. I., st. 2, c. 13; 2 Geo. II., c. 31; and 9 Geo. II., c. 26. The Test Act was abolished by 9 Geo. IV., c. 17.

TESTA DE NEVIL, an ancient document in two volumes, in the custody of the Queen's Remembrancer in the Exchequer, more properly called *Liber Feodorum*.

These books contain principally accounts (1) of fees holden either immediately of the king, or of others who held of the king *in capite*, and if alienated whether the owners were infeoffed *ab antiquo* or *de novo*, and also fees holden in frankalmoigne, with the values thereof respectively; (2) of serjeanties holden of the king, distinguishing such as were rented or alienated, with the values of the same; (3) of widows and heiresses of tenants *in capite*, whose marriages were in the gift of the king, with the values of their lands; (4) of churches in the gift of the king, and in whose hands they were; (5) of escheats, as well of the lands of Normans as others, in whose hands the same were, and by what services holden; (6) of the amount of the sums paid for scutage and aid, &c., by each tenant.

These volumes were printed in 1807, under the authority of the commissioners of the records of the realm.

TESTAMENT, a disposition of personal property to take place after the owner's decease, according to his desire and direction.

Testamenta, cum duo inter se pugnancia reperiuntur, ultimum ratum est: sic est, cum duo inter se pugnancia reperiuntur in eodem testamento. Co. Lit. 112.—(When two conflicting wills are found, the last prevails: so it is when two conflicting clauses occur in the same will.)

Testamenta latissimam interpretationem habere debent. Jenk. Cent. 81.—(Wills ought to have the broadest interpretation.)

TESTAMENTARY, given by will; contained in a will.

TESTAMENTARY CAUSES, proceedings in the ecclesiastical courts relating to the validity of wills of personal property, over which they have exclusive jurisdiction.

TESTAMENTARY GUARDIAN, one appointed by a father's will over his own child. See **GUARDIAN**.

Testamentum, i. e., testatio mentis, facta nullo præsente metu periculi, sed cogitatione mortalitatis. Co. Lit. 322.—(A will, that is, the witnessing of the mind, made under no present fear of danger, but in expectancy of death.)

Testamentum omne morte consummatum. Ibid.—(Every will is perfected by death.)

TESTATE, having made a will.

TESTATION, witness, evidence.

TESTATOR, he who makes a will or testament.

Testatoris ultima voluntas est perimplenda secundum veram intentionem suam. Ibid.

—(The last will of a testator is to be fulfilled according to his real intention.)

TESTATRIX, a woman who leaves a will.

TESTATUM WRIT, a process of execution which is issued into a different county than that in which the venue was laid in the declaration; it must be founded on a writ *eiusdem generis*, issued into the county of the venue, and returned *nulla bona*, &c.

TESTE, the witnessing part of a writ or other proceeding.

Testes qui postulat debet dare eis sumptus competentes. Reg. Jur. Civ.—(Whosoever demands witnesses, must find them in competent provision.)

Testibus deponentibus in pari numero dignioribus est credendum. 4 Inst. 279.—(Where the number of witnesses is equal on both sides, the more worthy are to be believed.)

Testimonia ponderanda sunt, non numeranda.—(Evidence is weight, not enumerated.)

TESTIMOIGNES, witnesses.

TESTIMONIAL, a writing produced by a person as an evidence for himself.

TESTIMONY, evidence given; proof by a witness. See **PERPETUATING TESTIMONY**.

Testis de visu præponderat aliis. 4 Inst. 279.—(An eye-witness is preferred to others.)

Testis lupanaris sufficit ad factum in lupanari. Moor, 817.—(A strumpet is a sufficient witness to a fact committed in a brothel.)

Testis nemo in sua causa esse potest. Reg. Jur. Civ.—(No one can be a witness in his own cause.)

Testis oculatus unus plus valet quam auriti decem. 4 Inst. 279.—(One eye-witness is worth more than ten ear-witnesses.)

Testis should be able to say from his heart, non sum doctus nec instructus nec curo de victoria, modo ministretur justitia. Ibid.—(A witness should be able to say from his heart, I am not taught nor instructed, neither do I care concerning the success, only that justice be administered.)

Testium numerus si non adjicitur, duo sufficiunt. Ibid.—(If the number of witnesses is not added, two suffice.)

Testmoignes ne poent testifie le negative, mes l'affirmative. Ibid.—(Witnesses cannot witness to a negative, they must witness to an affirmative.)

THAMES WATERMEN. By 7 & 8 Geo. IV., c. 75, the watermen, wherry-men, and lighter-

men of the Thames were consolidated into one body corporate, in the freemen and apprentices whereof is vested, subject to certain exceptions, the exclusive right of navigating that river for hire.

THANAGE OF THE KING, a certain part of the king's land or property, of which the ruler or governor was called thane. *Cowell.*

THANE [*thegn*, Sax., a servant], an Anglo-Saxon nobleman; an old title of honour, perhaps equivalent to baron. There were two orders of thanes, the king's thanes and the ordinary thanes. Soon after the Conquest this name was disused.

THANELANDS, such lands as were granted by charter of the Saxon kings to their thanes with all immunities, except the *trinoda necessitas*. *Cowell.*

THANESHIP, the office and dignity of a thane; the seignior of a thane.

THEATRES. The act for regulating theatres is the 6 & 7 Vict., c. 68.

THEFT, larceny: which see.

THEFT-BOTE [*thcof*, Sax., thief, and *bote*, compensation], compounding a felony. See **COMPOUNDING**.

Theftbote est emenda furti capta, sine consideratione curiæ domini regis. 3 Inst. 134.—(Theftbote is the paying money to have goods stolen from you returned, without having any respect for public justice.)

THELLUSON'S ACT, 39 & 40 Geo. III., c. 98. See **ACCUMULATION**.

THELONIUM, an abolished writ for citizens or burgesses to assert their right to exemption from toll. *F. N. B.* 226.

THELONMANNUS, the toll man or officer who receives toll.

THELONIO RATIONABILI HABENDO, a writ that formerly lay for him that had any part of the king's demesne in fee farm, to recover reasonable toll of the king's tenants there, if his demesne had been accustomed to be tolled. *Reg. Orig.* 87.

THEM or **THEME**, the right of having all the generation of villeins, with their suits and cattle. *Termes de Ley.*

THEMMAGIUM, a duty or acknowledgment paid by inferior tenants in respect of theme or team. *Cowell.*

THEODEN, an under-thane; a husbandman or inferior tenant.

THEOWES or **THEWS**, slaves, captives, or bondmen.

THESAURUS, **THESAURIUM**, the treasury.

Thesaurus competit domino regi, et non domino libertatis, nisi sit per verba specialia. Fitz. Corone, 281.—(A treasure belongs to the King, and not to the lord of a liberty, unless it be through special words.)

Thesaurus inventus est vetus dispositio pecunie, &c., cujus non extat modo memoria, adeo ut jam dominum non habeat. 3 Inst. 132.—(Treasure-trove is an ancient hiding of money, of which no recollection exists, so that it now has no owner.)

Thesaurus non competit regi, nisi quando nemo scit qui abscondit thesaurum. *Ibid.*—(Trea-

sure does not belong to the King, unless to one knows who hid it.

Thesaurus regis est vnicuique pars et bellum servat. Goth. 281.—The King's treasure is the bond of peace not the sword of war.)

THESAURUS INVENTUS, treasure trove.

THESMOTHETE [*thesmote*], a law maker; a law giver.

THETHINGA, a titling.

THIGSTERS, a sort of gentle beggars.

THINGS, the subjects of dominion or property, as contradistinguished from persons. They are distributed into two kinds: things real, comprehending immoveables, and hereditaments, and things personal, comprehending goods and chattels.

THINGUS, a thane or nobleman; knight or freeman.

THIRDBOROUGH, an under constable.

THIRDINGS, the third part of the corn growing on the ground, due to the lord for a heriot on the death of his tenant, within the manor of Turfat in Hereford. *Blount.*

THIRD-NIGHT-AWN-HINDE [*trium noctium asper*]. By the laws of St. Edward the Confessor, if any man lay a third night in an inn, he was called a third-night-awn-hinde, for whom his host was answerable if he committed any offence. The first night, forman-night, or unceuth (unknown), he was reckoned a stranger; the second night, two-night, a guest; and the third night, an awghinde, a domestic. *Bract.* l. 3.

THIRD PENNY. See **DENARIUS TERTIUS COMITATUS**.

THIRLAGE, a servitude or tenure in Scotland, by which the possessor of certain lands is bound to carry his grain to a certain mill to be ground, for which he is bound to pay a portion of the flour or meal, varying from a thirtieth to a twelfth part, which is termed multure. This servitude is now commuted for an annual payment in grain, by 39 Geo. III., c. 55.

THISTLE TAKE. It was a custom within the manor of Halton, in Chester, that if, in driving beasts over a common, the driver permit them to graze or take but a thistle, he shall pay a halfpenny a piece to the lord of the fee. And at Fiskerton, in Nottinghamshire, by ancient custom, if a native or a cottager killed a swine above a year old, he paid to the lord a penny, which purchase of leave to kill a hog was also called thistle-take. *Cowell.*

THORP, **THREP**, **TROP** [*villa, vicus*, Lat.], either in the beginning or end of the names of places, means a street or village.

THRAVE or **THREAVE** [Norm. Fr.], twenty-four sheaves or four shocks of corn; a certain quantity of straw; also, a herd, a drove, a heap.

THREATENING LETTERS. By 4 Geo. IV., c. 54, § 3, knowingly to send any letter or writing, with or without a name or signature subscribed thereto, or with a fictitious name or signature, threatening to kill or murder any of the King's subjects, or to burn or destroy their houses, outhouses, barns,

stacks of corn or grain, hay or straw, is made felony, and punishable with transportation for life, or for any term not less than seven years, or imprisonment, with or without hard labour, for any term not more than seven years.

As to extorting money by threat of accusation, by letter or writing, see 7 & 8 Geo. IV., c. 29, § 8.

THRENGES, vassals, but not of the lowest degree, of those who held lands of the chief lord.

THRITHING, a division consisting of three or four hundreds.

THUDE-WEALD, a woodward or person that looks after a wood.

THWERTNICK, the custom of giving entertainments to a sheriff, &c., for three nights.

TIDESMAN, a tidewaiter or custom-house officer, who watches on board of merchant ships till the duty of goods be paid, and the ships unladen.

TIGH [*teag*, Sax.], a close or inclosure.

TIHLA, an accusation.

TIMBER, wood felled for building or other such like use; in a legal sense, it extends to oak, ash, elm, &c. 1 *Roll. Abr.* 649.

TIMBERLODE, a service by which tenants were to carry timber felled from the woods to the lord's house.

TINCKINGS, signals given to forewarn the approach of an enemy. *Scotch Word*.

Timones vani sunt aestimandi qui non cadunt in constantem virum. 7 Co. 17.—(Fears which do not fall upon a resolved person, are accounted vain.)

TINEL LE ROY, the King's hall, wherein his servants used to dine and sup.

TINEMAN or **TIENMAN**, a petty officer in the forest, who had the nocturnal care of vert and venison, and other servile employments.

TINET, brushwood and thorns.

TINEWALD, the ancient parliament or annual convention of the people in the Isle of Man.

TINKERMEN, fishermen, who destroyed the young fry on the river Thames, by nets and unlawful engines.

TINPENNY, a tribute paid for the liberty of digging in tin mines.

TINSEL OF THE FEU, the loss of an estate held by feu duty in Scotland, from allowing two years' feu duty to remain unpaid.

TIPSTAFFS or **TIPSTAVES**, constables attending courts.

TITHES [*teotha*, Sax.], a species of incorporeal hereditament, being the tenth part of the increase yearly arising and renewing from the profits of lands, the stock upon lands, and the personal industry of the inhabitants; the first species being usually called *prædial*, the second *mixed*, the third *personal*.

The following persons are exempt from the payment of tithes by personal privilege: the Sovereign, rectors, vicars. All spiritual persons and corporations have been always capable of having their lands discharged of

tithes in various ways—as by real composition, by the pope's bull of exemption, by unity of possession, by prescription, by virtue of their order. All persons, spiritual and lay, may claim a partial exemption from tithes by custom (see *Modus*); or by long usage, in pursuance of the 2 & 3 Wm. IV., c. 100.

Tithes are now commuted into a rent charge, the amount of which is annually adjusted, according to the average price of corn. The following acts effect this arrangement:—6 & 7 Wm. IV., c. 71; 7 Wm. IV. and 1 Vict., c. 69; 1 & 2 Vict., c. 64; 2 & 3 Vict., c. 62; 3 & 4 Vict., c. 15; and 5 & 6 Vict., c. 54.

A board, under the title of "The Tithe Commissioners for England and Wales," is established, and the commutation may be effected in one of two ways; either by a voluntary parochial agreement, confirmed by the commissioners, or by the compulsory award of the commissioners. The value, either voluntarily agreed upon or awarded by the commissioners, is to be considered as the amount of the total rent-charge to be paid in respect of the tithes in that parish, and to be afterwards apportioned among the lands of that parish, having regard to their average titheable produce and productive quality; and after the apportionment shall have been confirmed, such lands are to be absolutely discharged from the payment of all tithes, and instead thereof, shall be subject to their portion of the rent-charge which shall be thenceforth payable to the former tithe owner, by two half yearly payments, which are to fluctuate according to the price of corn. An advertisement is inserted by authority in the London Gazette, in January in every year, stating the average price of wheat, barley, and oats, for seven years, ending on Thursday before Christmas then next preceding; every rent-charge then shall be deemed of the value of so many bushels of wheat, barley, and oats, in equal quantities, as the same would have been competent to purchase according to the prices contained in the advertisement inserted in the Gazette, immediately after the passing of the 6 & 7 Wm. IV., c. 71; and that after every 1st of January it shall vary, so as always to consist of the price of the same quantities, according to the advertisement then next preceding.

A tithe rent-charge varies in amount, and no person whatever is personally liable to its payment, thus differing from a rent-charge generally. When the rent-charge is in arrear for twenty-one days, the remedy is by distress on the land, as in the case of landlord and tenant; but if it be in arrear for forty days, and there be no sufficient distress, a writ may then be obtained from one of the Judges at Westminster to assess the arrears, after which the owner of the rent-charge may sue out a writ of execution for taking possession of the lands, and holding them till his debt and costs be fully satisfied. But

neither a distress nor writ of execution can be resorted to for more than two years' arrears at any one time.

In some cases lands may obtain an exemption under the commutation acts from all liability either to tithe or rent charge. For to the extent of twenty acres in the same parish, land is allowed to be given to the tithe owner as an equivalent; and any person seised in possession of an estate in fee simple, or fee tail, of any tithes or rent charge, may dispose of the same, so that it shall be merged in the inheritance of the land charged.

TITHE-FREE, exempted from the payment of tithes.

TITHER, one who gathers tithes.

TITHING, the number or company of ten men, with their families, knit together in a society, all of them being bound to the king for their peaceable and good behaviour, the chief of whom was the tithing-man (tooth-ing-man). *Cowell*.

TITHING-MAN, a peace officer, an under constable.

TITHING-PENNY. See **TEDING-PENNY**.

TITLE, a general head, comprising particulars; an appellation of honor; a claim of right. It is the means whereby an owner possesses his property justly.

As to title to realty:

There are several stages and degrees requisite to form a complete title to lands and tenements.

The lowest and most imperfect degree of title consists in the mere naked possession, or actual occupation of the estate, without any apparent right or any shadow or pretence of right, to hold and continue such possession.

The next step to a good and perfect title is the right of possession, which may reside in one man, while the actual possession is not in himself but in another.

The last step is the right of property (*jus proprietatis*), without either possession or even the right of possession. This is frequently styled mere right (*jus merum*), and the estate of the owner is in such cases said to be totally divested and put to a right.

It is the union of these three degrees, viz.: actual possession, right of possession, and right of property, which forms a complete title to lands, tenements, and hereditaments. See **DROIT-DROIT**.

The title to things real may be reciprocally acquired or lost by

1. Descent.
2. Purchase, which includes
 - (a) Escheat.
 - (b) Occupancy.
 - (c) Prescription.
 - (d) Forfeiture.
 - (e) Alienation.

The principal circumstances in drawing conclusions as to title, to be attended to, are—

- 1st. That there is a deduction of title to the legal estate for a period of sixty years;

2ndly. That the legal estate can be obtained free from any equities affecting it;

3rdly. That all the particular estates either are determined, or can be conveyed to the purchaser or his trustee;

4thly. That no reversion or remainder is outstanding in the Crown, or in any stranger; and,

5thly. That there are not any incumbrances by way of condition, or limitation over, mortgagees, Crown debts, judgments, statutes, decrees, *lis pendens*, annuities, rents, legacies, portions, charges, dower, courtesy, forfeitures, leases, &c., or any outstanding term of years, which the purchaser cannot procure, either to be extinguished or assigned.

There are at least three species of doubtful titles: 1st, where the title is doubtful by reason of some uncertainty in the law itself; 2ndly, where the doubt is as to the application of some settled principle or rule of law; and 3rdly, where a matter of fact upon which a title depends is either not in its nature capable of satisfactory proof, or, being capable of such proof, is yet not satisfactorily proved.

It may be safely asserted that there is no defect, which more frequently renders it impossible for a person who has a good title to prove it, or enables a party who has a bad title fraudulently to exhibit a colorable ownership than the want of evidence of the identity of the parcels.

A good title is produced whenever it appears that upon certain acts done, the legal and equitable estates in the property contracted for, will become vested in the purchaser, those acts being such as the vendor either himself can perform or cause to be performed.

The title to things personal may be acquired or lost by—

- (1) Occupancy.
- (2) Invention.
- (3) Prerogative.
- (4) Forfeiture.
- (5) Custom.
- (6) Succession.
- (7) Marriage.
- (8) Judgment.
- (9) Gift or Grant.
- (10) Contract.
- (11) Bankruptcy or Insolvency.
- (12) Testament.
- (13) Administration.

TITLE OF CLERGYMEN, some certain place where they may exercise their functions; also, an assurance of being preferred to some ecclesiastical benefice.

TITLE DEEDS, the muniments or evidences of ownership. As to stealing them, see 7 & 8 Gen. IV., c. 29, § 23.

TITULARS OF ERECTION, persons who, after Popery was destroyed in Scotland, got a right to the parsonage tithes which had fallen to monasteries, because of several parishes that had belonged to them in mort-

main. They are the same as impropiators in England.

Titulus est justa causa possidendi id quod nostrum est; dicitur à tuendo, quia per illum, possessor defendit terram: et plerumque constat ex munimentis, quæ muniunt et tuentur causam. 8 Co. 153.—(A title is the just right of possessing that which is our own; it is called from defence [*tuendo*], because by it the possessor defends his land; and it principally consists of bulwarks which defend and protect the cause.)

TOALIA, a towel. There is a tenure of lands by the service of waiting with a towel at the King's coronation.

TOFT, a place where a messuage has stood. *Cowell.*

TOFTMAN, the owner or possessor of a toft.

TOLERATION ACT. 1 W. & M., st. 1, c. 18, confirmed by 10 Anne, c. 2, by which all persons dissenting from the Church of England (except Papists and persons denying the Trinity) were relieved by such of the acts against non-conformists, as prevented their assembling for religious worship according to their own forms, or otherwise restrained their religious liberty, on condition of their taking the oaths of allegiance and supremacy, and subscribing a declaration against transubstantiation; and in the case of dissenting ministers, subscribing also to certain of the thirty-nine articles. The clause of this act, which excepted persons denying the Trinity from the benefits of its enactments, was repealed by 53 Geo. III., c. 160.

TOLL [*tollere*, Lat.], to bar, defeat, or take away, as to toll an entry is to deny and take away the right of entry.

TOLL [*tol*, Sax. and Dut., *told*, Dan., *toll*, Wel., *taille*, Fr.], an excise of goods; a seizure of some part for permission of the rest.

It has two significations:—

1. A liberty to buy and sell within the precincts of the manor, which seems to import as much as a fair or market.

2. A tribute or custom paid for passage. *Cowell.*

TOLLAGE, any custom or imposition.

TOLLBOOTH, a prison, a custom-house, an exchange; also, the place where goods are weighed.

TOLLDISH, a vessel by which the toll of corn for grinding is measured.

TOLLER, one who collects tribute or taxes.

TOLLGATHERER, the officer who takes toll.

TOLL-TRAVERSE or **TRAVERS**. Where one claims to have toll for every beast driven across his ground, for which a man may prescribe and distrain for it *vid regid.* *Cro. Eliz.* 710.

TOLL-THOROUGH. When a town prescribes to have toll for such a number of beasts, or for every beast that goes through the town, or over a bridge or ferry belonging to it. *Com. Dig.*, tit. *Toll* (C).

TOLSESTER, an old excise; a duty paid by tenants of some manors to the lord for liberty to brew and sell ale.

TOLSEY, the same as tollbooth: which see.

Also, a place where merchants meet.

TOLL, a writ whereby a cause depending in a court-baron was taken and removed into the county court. *O. N. B.* 4.

TOLTA, wrong, rapine, extortion.

TONNAGE, the number of tons burden that a ship will carry. 3 & 4 Wm. IV., c. 55, §§ 16, 17.

TONNAGE DUTIES, those imposed on wines imported, according to a certain rate per ton. This, with poundage, was formerly granted to the monarch for life by acts of Parliament, usually passed at the beginning of each reign; but by 9 Anne, c. 6; 1 Geo. I., c. 12; and 3 Geo. I., c. 7, they were made perpetual, and mortgaged for the public debt.

TONTINE [from *Tunti*, an Italian, who is said to have invented these life annuities], annuity on survivorship.

TOP ANNUAL, an annual rent out of a house built in a burgh.

TORRA [*tor*, Sax.], a mount or hill.

TORT [*tortus*], injury or wrong. See **PERSONAL ACTION**.

Tort a le ley est contrarie. Co. Lit. 158.—(Tort is contrary to the law.)

TORTFEASOR, a wrongdoer, a trespasser.

TORTURE. See **RACK**.

TOTIES QUOTIES, as often as a thing shall happen.

TOTTED, a good or sperate debt to the king.

Totum præfertur unicuique parti. 3 Co. 41.—(The whole is preferable to any single part.)

TOURN, the sheriff's tourn or court.

TOUT TEMPS PRIST ET UNCORE EST (always was and is at present ready).

TOWAGE, money paid for towing.

TOWN [*tun*, Sax.], a tithing or vill; any collection of houses larger than a village.

Towns are either corporate, that is, having a corporation to transact its business, or not corporate. Some have the liberty or franchise of a market, others have not. Towns are usually divided into cities, boroughs, or common towns.

TOWNCLERK, an officer who manages the public business of a place.

TOWN CRIER, an officer in a town, whose business it is to make proclamations.

TOWNHOUSE, the hall where the public business is transacted.

TOWNSHIP, the corporation of a town; the district belonging to a town.

TOXICAL, poisonous, containing poison.

Tractent fabrilia fabri. 3 Co. Epist.—(Let smiths perform the work of smiths.)

TRADE [*tratta*, Ital.], traffic; commerce; exchange of goods for other goods, or for money.

The offences against trade are—

(1) Smuggling.

(2) Frauds by bankrupts and insolvents.

(3) Usury.

(4) Cheating.

(5) Monopoly.

TRADER, one engaged in merchandize or commerce.

TRADESMAN, a shopkeeper.

Traditio loqui facit chartam. 5 Co. 1.—(Delivery makes the deed to speak.)

TRADITION, the act of giving up; delivery.

TRAINBANDS, the militia; the part of a community trained to martial exercises.

TRAITOR [*traditor*, Lat.], one who, being trusted, betrays; a state offender.

TRAITOROUSLY, in a manner suiting traitors; perfidiously; treacherously.

TRAITRESS, a woman who betrays.

TRANSCRIPT, a copy; anything written from an original.

TRANSCRIPTO PEDIS FINIS LEVATI MITTENDO IN CANCELLARIUM, a writ which certified the foot of a fine levied before justices in eyre, &c., into the Chancery. *Reg. Orig.* 669.

TRANSCRIPTO RECOGNITIONIS FACTÆ CORAM JUSTICIARIIS ITENERANTIBUS, &c., an old writ to certify a recognizance taken by justices in eyre. *Reg. Orig.* 152.

TRANSFER, to convey; to make over from one to another; to remove.

Transferuntur dominia sine titulo et traditione, per usucaptionem, scilicet, per longam continuam et pacificam possessionem. Co. Lit. 113.—(Rights of dominion are transferred without title or delivery, by usucaption, to wit, long and quiet possession.)

Transgressio est cum modus non servatur nec mensura, debet enim quilibet in suo facto modum habere et mensuram. Co. Lit. 37.—(Transgression is when neither mode nor measure is preserved, for every one in his act ought to have a mode and measure.)

Transgressionem multiplicata, crescat pena inflictio. 2 Inst. 479.—(Where transgression is multiplied, let the infliction of punishment be increased.)

TRANSGRESSIONE, a writ or action of trespass.

TRANSIRE, a warrant from the custom-house to let goods pass.

TRANSITORY ACTIONS, the opposite to local actions: which see.

TRANSITU, *stoppage in*. See **STOPPAGE IN TRANSITU**.

TRANSLATION, the removing from one place to another; the removal of a bishop to another diocese.

TRANSPORTATION, the banishing or sending away a criminal into another country; also, the carriage of property.

This punishment was introduced in the reign of Queen Elizabeth, 39 Eliz., c. 4. The word is first used in the 13 & 14 Car. II., c. 23. The punishment is now chiefly regulated by 5 Geo. IV., c. 84.

Returning from transportation before the expiration of the term of punishment, is an offence against public justice, and punishable by transportation for life. 4 & 5 Wm. IV., c. 67.

TRANSUMPTS, judicial copies of rights to certain lands. *Scotch Word*.

TRAVERSE, denying some matter of fact alleged in a pleading, whether at common law, in equity, or in criminal prosecutions.

Of traverses there are several kinds; but the most ordinary is the common traverse, which consists of a tender of issue, i. e., of a denial, accompanied with a formal offer of the point denied, for decision, and the denial that it makes is by way of express contradiction, in terms of the allegation traversed. The common traverse is not invariably a negative, for if opposed to a precedent negative allegation, it will, of course, be in the affirmative. There is also a sort of traverse, somewhat in the style of the general issue, before Hilary Term, 4 Wm. IV., as *non est factum*, never indebted, *ne disturba pas*: which see, under their appropriate heads. *Step. Plead.* 170.

TRAVERSING INDICTMENT, postponing the trial of it.

No traverse is allowed in cases of felony, but where the courts deem it necessary for the purposes of justice, they will postpone the trial to the next assizes or sessions. It is a good ground when a material witness is ill or kept out of the way by contrivance. In no instance will a trial be put off on account of the absence of witnesses to character. The motion on behalf of a prisoner cannot be made until after plea pleaded.

The right of the court to postpone the trial, in cases of misdemeanor, is recognised by 60 Geo. III. and 1 Geo. IV., c. 4, § 7; and see 7 & 8 Vict., c. 71.

TRAVERSING NOTE. After the expiration of the time allowed to a defendant in Chancery to plead, answer, or demur (not demurring alone) to any original or supplemental bill, or bill amended before answer, if such defendant have filed no plea, answer, or demurrer, the plaintiff may file a note at the Record and Writ Clerks' Office, to the following effect: the plaintiff intends to proceed with his cause, as if the defendant had filed an answer traversing the case made by the bill.

A similar note may be filed, under similar circumstances, to a bill amended after answer; and after the expiration of time allowed for filing a further answer; and also, after demurrer or plea, to the whole bill overruled; and after the time allowed by the court for filing an answer.

A traversing note having been filed, a copy thereof is to be served on the defendant against whom the same is filed, but the service need not be personal.

A traversing note being filed, and a copy thereof duly served, is to have the same effect as if a defendant had filed a full answer or further answer, traversing the whole bill, or such parts of the bill as the note relates to, on the day the note was filed.

After the service of the copy of a traversing note, filed as aforesaid, a defendant is not at liberty to plead, answer, or demur to a bill, or to put in any further answer thereto, without the special leave of the court, and the cause is to stand in the same situation as if such defendant had filed a full answer, or further answer to the bill, on the day on which the note was filed. *Orders, 8th May, 1845, clauses 52—53.*

TRAVERSE OF AN OFFICE, proof that an inquisition made of lands or goods by the escheator, is defective and untrue made.

TRAVERSUM, a ferry.

T. R. E., *tempore regis Edwardi*.

TREACHER, TREACHETOUR, or TREACHOUR, a traitor.

TREADMILL, an instrument of prison discipline. It is composed of a large revolving cylinder, having ledges or steps fixed round its circumference; the prisoners walk up these ledges, and their weight revolves the cylinder.

TREASON [*trahir*, Fr., to betray, *proditio*, Lat.], the crime of treachery and infidelity to our lawful Sovereign. It is the highest civil crime which any person can possibly commit.

Under the 25 Edward III., c. 2, the crime of treason consists of five distinct branches:

1. When a man compasses or imagines the death of our lord (the King, of our lady the Queen, or of their eldest son and heir. The husband of a queen regnant is not within this statute.

2. If a man violate the King's companion (his wife), or the King's eldest daughter, unmarried, or the wife of the King's eldest son and heir.

3. If a man levy war against our lord the King in his realm.

4. If a man be adherent to the King's enemies in his realm, giving to them aid and comfort in the realm or elsewhere.

5. If a man slay the chancellor, treasurer, or the King's justices of the one bench or the other, justices in eyre or justices of assize, and all other justices assigned to hear and determine, being in their places doing their offices.

Since the before mentioned statute, the following additions have been made to the number of treasonable offences:—

6. By 1 Anne, st. 2, c. 17, § 3, if any person shall endeavour to deprive or hinder any person, being the next in succession to the Crown, according to the limitations of the act of settlement, from succeeding to the Crown, and shall maliciously and directly attempt the same by any overt act, such offence shall be treason.

7. By 6 Anne, c. 7, if any person shall maliciously, advisedly, and directly, by writing or printing, maintain or affirm that any other person has any right or title to the Crown of this realm, otherwise than according to the Act of Settlement, or that the kings of this realm, with the authority of Parliament, are not able to make laws and statutes to bind the Crown, and the descent thereof, such person shall be guilty of treason.

8. By 36 Geo. III., c. 7, made perpetual by 57 Geo. III., c. 6, if any person shall, within the realm or without, compass, imagine, or intend death, destruction, or any bodily harm to the person of the King, or to depose him, or to levy war within this realm, in order, by force, to compel him to change

his measures or counsel, or to overawe either house of Parliament, or to excite an invasion of any of his Majesty's dominions, and shall express, utter, or declare such intentions by publishing any printing or writing, or by any overt act, he shall be adjudged a traitor.

9. By 11 Geo. IV. and 1 Wm. IV., c. 66, § 2, forging the Great Seal of the United Kingdom, his Majesty's Privy Seal, any Privy Signet of his Majesty, his Majesty's Sign Manual, the Seals of Scotland, or the Great Seal or Privy Seal of Ireland, is declared to be treason.

10. By 7 Wm. III., c. 3, no person shall be prosecuted for treason but within three years after the commission of the offence, except in the case of a designed assassination of the Sovereign, by poison or otherwise.

The punishment is—1st, that the offender be drawn on a hurdle to the place of execution; 2d, that he be hanged by the neck until he be dead; 3d, that his head be severed from the body; 4th, that his body be divided into four quarters; 5th, that his head and quarters shall be at the disposal of the Crown. The Sovereign may, however, change the whole sentence into beheading. 4 *Step. Com.* 183.

TREASONABLE, having the nature or guilt of treason.

TREASURER, one who has the care of money or treasure.

There was a Lord High Treasurer of England, but the duties are now generally executed by commissioners.

TREASURER OF A COUNTY, he that keeps the county stock. There are two of them in each county, chosen by the major part of the justices of the peace, &c., at Easter sessions; they must have 10*l.* a year in land, or 150*l.* in personal estate, and shall not continue in their office above a year; they are to account yearly at the Easter sessions, or within ten days after, to their successors, under penalties.

TREASURER'S REMEMBRANCER, he whose charge was to put the lord treasurer and the rest of the Judges of the Exchequer in remembrance of such things as were called on and dealt in for the Sovereign's behoof. There is still one in Scotland.

TREASURE TROVE [*thesaurus inventus*, Lat.], money or coin, gold, silver, plate, or bullion found hidden in the earth or other private place, the owner thereof being unknown or unfound, in which cases it belongs to the Crown. Bracton defines it, *vetus depositio pecunie*.

Concealing treasure trove is punishable by fine or imprisonment.

Coroners ought to inquire of treasure trove, being certified thereof. 4 *Edw. I.*, st. 2.

TREASURY, the place where treasure is deposited; also, the office of treasurer. *Cowell*.

TREATY, negotiation; act of treating; a compact of accommodation relating to public affairs.

It is the sovereign's prerogative to make

treaties, leagues, and alliances with foreign states and princes.

TREATING ACT, 7 Wm. III., c. 4, by which, and the 5 & 6 Vict., c. 102, § 22, it is enacted, that no candidate for member of Parliament shall give, or allow to be given at his expense (either wholly or in part), any meat, drink, entertainment, or provision, in order corruptly to influence or reward a voter, on pain of being deemed incapable of being elected or sitting in that Parliament for that place.

TREBLE COSTS, costs which were thus calculated—the single amount, and three-fourths as much again. They are abolished by 5 & 6 Vict., c. 97.

TREBLE DAMAGES, they are in some cases given by particular statutes; but at common law they are always single.

TREBUCKET, a tumbrel or cucking-stool. See **CASTIGATORY**.

TREET [*triticum*, Lat.], fine wheat. 51 Hen. III.

TREMAGIUM, **TREMESIUM**, **TERMI-SIUM**, the season or time of sowing summer corn, being about March, the third month, to which the word may allude.

TREMELLUM, a granary.

TRESAYLE, an abolished writ sued on ouster by abatement, on the death of the grandfather's grandfather.

TRESPASS [*transgressio*], any transgression of the law, less than treason, felony, or misprision of either.

The action of trespass lies where a party claims damages for a trespass committed against him. A trespass is an injury committed with violence, and this violence may be either actual or implied; and the law will imply violence, though none is actually used, where the injury is of a direct and immediate kind, and committed on the person or tangible and corporeal property of the plaintiff. Of actual violence, an assault and battery is an instance; of implied, a peaceable but wrongful entry upon the plaintiff's lands. *Step. Plead.* 16. As to trespass on the case, see **CASE**.

TRESPASSER, one who commits a trespass.

TRESTORNARE, to turn or divert another way. *Cowell*.

TRET. See **TARE**.

TRETHINGS [*trethu*, Wel., to tax], taxes, imposts.

TREYTS, taken out or withdrawn, as withdrawing or discharging a juror.

Tria genera sunt executorum: 1. A lege constitutus, et ideo dicitur legitimus: ut episcopus. 2. A testatore constitutus, et ideo dicitur testamentarius, ut executor. 3. Ab episcopo constitutus, et ideo dicitur dativus; ut administrator. Swinb. p. 4, § 3.—(There are three sorts of executors: 1. Such an one as the law itself constitutes, and, therefore, called legitimate, viz., a bishop. 2. Such an one as is appointed by the testator, and thence called executor. 3. Such an one as the bishop appoints, called thence dative, viz., an administrator.)

TRIAL, the examination of a cause civil or criminal, before a Judge who has jurisdiction over it, according to the laws of the land. 1 *Inst.* 124.

Tria sequuntur defamatorem famosum: pravitatis incrementum: bursæ decrementum: conscientie detrimentum. 5 Co. 126.—(Three things follow a noted defamer: the increase of crime; the decrease of purses; and the injuring of consciences.)

Triatio ibi semper debet fieri, ubi juratores meliorem possunt habere notitiam. 7 Co. 1.—(Trial ought to be had always there where the jury can have the best knowledge.)

TRIBUNAL, the seat of a Judge; a court of justice.

TRIBUTE, payment made in acknowledgment; subjection.

TRICESIMA, an ancient custom in a borough in the county of Hereford, so called, because thirty burgesses paid 1d. rent for their houses to the bishop, who is lord of the manor. *Lib. Nig. Heref.*

TRIDINGMOTE, the court held for a triding or trithing.

TRIENS, a third part; also, dower.

TRIENNIAL ELECTIONS ACT, 6 W. & M., c. 2, prolonged to seven years, by 1 Geo. I., st. 2, c. 38.

TRINITY HOUSE. A society at Deptford, incorporated by Henry VIII., in 1515, for the promotion of commerce and navigation, by licensing and regulating pilots, and ordering and erecting beacons, light-houses, buoys, &c.

By 6 & 7 Wm. IV., c. 79, the Trinity House was empowered to purchase the existing interests of private persons in certain specified light houses, so as to place under their immediate authority all edifices of that description in England; the lighthouse of Heligoland was also vested in them; and it is provided that no new light, beacon, or sea-mark, should be placed without the sanction of the said company. Regulation is also made as to the manner in which the tolls of light-houses are to be collected from ships, and it is enacted that the Trinity House may from time to time, upon the requisition, or with the consent of the king in council, remove and discontinue any light houses, and erect others, and may direct the owners of kilns or furnaces so kept as to be liable to be mistaken for lighthouses, to make the necessary alteration therein, so that such mistake may in future be prevented. The light house at Gibraltar is vested in the same company. 1 & 2 Vict., c. 66.

TRINOBANTES, **TRINONANTES**, or **TRINOVANTES**, inhabitants of Britain, situated next to the Cantii northward, who occupied, according to Camden and Baxter, that country which now composes the counties of Essex and Middlesex, and some part of Surrey. But if Ptolemy be not mistaken, their territories were not so extensive in his time, as London did not then belong to them. The name seems to be derived from the three following British words: *Tri*, now,

hant, i. e., inhabitants of the new city (London). Encyc. Lond.

TRINODA NECESSITAS, under this denomination are comprised three distinct imposts, to which all landed possessions, not excepting those of the church, were subject, viz. :—

1. Bryge-bót, for keeping the bridges and high roads in repair.

2. Burg-bót, for keeping the burghs or fortresses in an efficient state of defence.

3. Fyrd, or contribution for maintaining the military and naval force of the kingdom. *Anc. Inst. Eng.*

TRIOURS, TRIOURS, or TRIERS, such as are chosen by the court to examine whether a challenge made to the panel of jurors, or any of them, be just or not.

TRIPARTITE, divided into three parts, having three correspondent copies.

TRISTIS, a forest immunity. *Manw.* p. 1, 86.

TRITHING, the third part of a shire or province.

TRITHING-REEVE, a governor of a trithing.

TRIUMVIR, a trithing-man or constable of three hundred.

TRIVERBIAL DAYS [*dies fasti*], judicial days, when the courts are open for business.

TRONAGE, a customary duty, or toll for weighing wool.

TRONATOR, a weigher of wool.

TROPHY MONEY, money formerly collected and raised in London, and the several counties of England, towards providing harness and maintenance for the militia, &c.

TROVER [*trouver*, Fr., to find], an action which lies where one gets possession of the goods of another, by delivery, finding, or otherwise, and refuses to deliver them to the owner, or sells or converts them to his own use, without the owner's consent, for which the owner by this action recovers the value of his goods. *Selwyn's Nisi Prius*, tit. "Trover."

TROY WEIGHT [*pondus Trojæ*], a weight of twelve ounces to the pound, having its name from Troyes, a city in Champaign.

TRUCE, a league or cessation of arms.

TRUCK SYSTEM, the payment of wages in goods instead of money. The plan has been for the masters to establish warehouses or shops, and the workmen in their employ have either had their wages accounted for to them by supplies of goods from such depôts, without receiving any money, or they have the money with an express understanding, that they were to resort to the warehouses or shops of their masters for the articles of which they stood in need. This system was abolished by 1 & 2 Wm. IV., c. 32.

TRUE BILL, the endorsement which the grand jury makes upon a bill when they find it, being satisfied of the truth of the accusation.

TRUSTEE, one entrusted with property for the benefit of a *cestui que trust*: which see.

TRUSTS. These "creatures of equity," as trusts are significantly termed, were invented during the reign of Edward III., but the present learning relating to them was the con-

sequence of the common law construction of the Statute of Uses. It was held at law (as the statute did not in its letter apply to all sorts of uses), that it did not affect uses engrafted upon uses, which constitute one great class of modern trusts in land; in other words, it was held that a use limited upon a use could not be executed by the statute. For instance, a conveyance to the use of A. and his heirs, to the use of B. and his heirs, the statute did not execute the use to B. It was also held, that the statute did not apply to uses (now called trusts) created upon terms for years, or to trusts of a nature requiring the trustee still to hold the estate, in order to perform the trusts, and, generally, not to trusts created of mere personal estate. The statute has had no other effect than to abolish all the inconveniences attendant upon uses at common law, and to introduce a new species of use, by the name of *trust*, which is strictly a use upon a use, modelled and shaped after its own fashion. The technical scruples of the common law having denied to trusts all cognizance, and consequently all relief, the Court of Chancery, to prevent what would otherwise have been a total denial of justice, interfered to compel a performance of the trusts. And surely a trust ought as strictly to be performed in conscience as any other use. Hence all matters of trust and confidence are exclusively cognizable in equity: there being few cases (except bailments and rights founded on contract, which are relievable by an action on promises, and especially by action for money had and received), in which a remedy can be had in the common law courts. It is frequently laid down, that trusts since the statute are the same as uses were before the statute. It is certainly true that the notion of trusts was borrowed from the doctrine of uses, but in construction, trusts differ very widely indeed, from uses before the statute, for if they did not, all the injustice and inconvenience experienced before the statute would have been continued to us with very serious consequences, unless, indeed, this total difference of construction had taken place, as Lord Hardwicke truly observed, "trusts would not have been endured." The trusts created by the statute are of a *permanent* and general nature; and are, in fact, a species of secondary uses, which, being beyond the contemplation of the statute, remain unexecuted. They, therefore, differ materially from those special and transitory trusts. A trust, in its most enlarged sense, may be defined to be an equitable right, title, or interest in property, real or personal, distinct from the legal ownership thereof, *i. e.*, the legal owner (who is the trustee) holds the direct and absolute dominion over the property in the view of the law, but the income, profits, or benefits thereof, in such trustee's hands, belong to other persons, who having this equitable and beneficial estate, are called *cestui que trusts*. The *cestui que trust* is

not recognized at law, and if he were in possession of the land, he would be held, at law, as the tenant at will to the trustee. But the Court of Chancery makes the legal estate, which is vested in the trustee, subservient to certain uses, benefits, or changes, and these constitute the trusts, which equity compels the legal owner, as trustee, to perform in favour of the *cestui que* trust or beneficiary. The term *cestui que* trust is a barbarous Norman law French phrase, and is very ill adapted to the idiom of our language. It would be desirable to banish the expression, and substitute some less harsh word, conveying an analogous meaning. In the Roman law the trustee was called, *hæres fiduciarius*, and the *cestui que* trust, *hæres fidei commissarius*, which has been translated, *fide committee*, and *fide commissary*. The present French law calls the *cestui que* trust, *fidei commissaire*. Mr. Justice Story prefers beneficiary, though a little remote from the original meaning of the Roman term, yet being a very appropriate word, as it has not hitherto acquired any general use in a different sense, it is here adopted.

As equity will compel the performance of the trust, so it will assist the trustees, and protect them in the due performance of the trust, whenever they seek its aid, as to the establishment, the management, or the execution of such trust.

These three things are said to be indispensable to a valid trust: 1st, sufficient words to raise it; 2nd, a definite subject; and, 3rd, a certain or ascertained object. The Statute of Frauds (29 Car. II., c. 3, § 7), requires all declarations or creations of trusts or confidences of any lands, tenements, or hereditaments, to be manifested and proved by some writing, signed by the party entitled to declare such trust, or by his last will in writing. The statute excepts trusts arising, transferred, or extinguished by operation of law, and also declarations of trust of personalty. There is no particular form of writing prescribed, nor needs the writing to be under seal; hence any letter, evincing a trust, or other writing of a trustee, stating the trust, or any language in writing, clearly expressive of a trust intended by the party, although in the form of a desire or a request, or a recommendation, will create a trust by implication. It is a maxim in equity, admitting of no exception, that a trust shall never fail for want of a trustee. Wherever then a trust exists, either by the declaration of the party, or by intendment or implication of law, and the party creating the trust has not appointed any trustee to execute it, equity will follow the legal estate, and decree the person in whom it is vested (not being a *bonâ fide* purchaser for a valuable consideration without notice, or otherwise entitled to protection) to execute the trust. And where property is bequeathed in trust, but no trustee is appointed, equity, as to real estate, considers

the heir at law or devisee as a trustee; as to personal estate, the personal representative, and in the case of copyholds, the legal estate devolving upon the lord, he would now, under 4 Wm. IV., c. 23, be probably declared a trustee. And by the same act, property held in trust is not liable to escheat by the treason or felony of the trustee.

The estate of *cestui que* trust, or beneficiary, is neither *jus in re* nor *jus ad rem*, but only a confidence and trust, but he is entitled to the aid of equity to avail himself of the benefit of the trust; and his powers over the estate have thus been summed up by Mr. Preston: 1st, the *cestui que* trust or beneficiary is the beneficial owner in equity, and has an equitable estate; 2ndly, this estate gives the like power of alienation in equity as may be rightfully exercised at law by the owner of a like legal estate; 3rdly, the like limitations may be made of the equitable as may be made of the legal ownership; 4thly, the limitations of trust or equitable estates receive the like construction as if they were limitations of the legal estate; 5thly, whenever a limitation of an use would be good by the rules of law, a like limitation of the trust or equitable ownership would be valid in equity; 6thly, any limitations, which, as tending to a perpetuity, would be void if it were of an use, will be void if it be of the trust or equitable ownership; 7thly, of equitable estates there cannot, in a technical sense, be any disseisin, and therefore, notwithstanding adverse possession, there may be transfers or dispositions by the equitable owner, either by deed or will; and it may be added, in the 8th and last place, that the Statute of Limitations does not apply between the beneficiary and his trustee (unless he is trustee by implication only).

Trusts shall now be examined under their usual divisions; i. e., express or direct trusts, and implied or constructive trusts, created by the parties or resulting by the operation of law.

Express trusts are those created by the direct acts of the parties, by deed, will, or writing. They are deducible from the nature of the transaction, as matter of clear intention, although not made in direct terms, or they are superinduced upon the transaction by operation of law, as matter of equity, independent of the particular intention of the parties. The most important are trusts of real or personal property created in preliminary sealed agreements, as marriage articles, or articles for the purchase of land, or in formal conveyances, such as marriage settlements, terms for years, mortgages, and other conveyances and assignments for the payment of debts, or for raising portions, assignments of *choses in action*, or for other special purposes, or in last wills and testaments. It is impossible to keep these two great classes of trusts separate from one another, inasmuch as they are found often in combination—the distinctions will be observed so far as they are practicable.

As to marriage settlements. If the marriage settlement be final in its character, and the trusts thereby created are clearly defined and determined, the trusts will be treated as executed. But where mere articles have been signed before marriage, and equity is required to execute them, it will construe the words, according to the presumed intention of the parties, most beneficially for the issue of the marriage, and it will put it out of the parents' power to defeat the issue by requiring that the limitations in the marriage settlement should be, what are called, limitations in strict settlement; i. e., instead of giving the parents a fee tail, the limitations will be made to them for life, with remainders to the first and other sons, &c., in fee tail; or if the articles apply to daughters, similar limitations to them also; for otherwise, if the parents had a fee tail, it would be in their power to defeat the purpose of protecting and supporting the interests of the issue, and to appropriate the estate to themselves, by a disentailing deed, under the 3 & 4 Wm. IV., c. 74. Terms for years and personal chattels can be limited in equity in strict settlement, in the same way and to the same extent as real estate of inheritance may be, so as to be transmissible like heir-looms. As a general rule, marriage articles will be decreed in favour of those who are strictly within the reach and influence of the consideration of the marriage, or claiming through them, as the wife and issue, but they will not be decreed in favour of mere volunteers for whom the settlor is under neither moral nor natural obligation to provide, such as his distant heirs or relations, or mere strangers. In marriage settlements are frequently and principally found limitations to trustees to preserve contingent remainders, the object of which is to prevent the destruction of contingent remainders by the tenant for life, or other party, before the remainder comes in esse, and is vested in the remainder man; so that the whole inheritance might come entire to the *cestui que* trust or beneficiary in contingency. Equity will afford every assistance to such trustees to aid them in the due execution of their trust.

Terms for years are often created to secure the payment of jointures, and portions for younger children, &c., but they do not determine, upon the performance of the trust for which they were created, unless there be a special proviso for cesser of the term contained in the deed. Supposing, therefore, that A. purchases an estate, which had been previously sold, mortgaged, leased, and charged with every kind of incumbrance to which real property is subject, in this case, A. and the other purchasers, and all incumbrancers having equal claims upon the estate, i. e., their equities are equal. But if there be a term of years subsisting in the estate prior to the purchases, mortgages, and other incumbrances, and A. procures an as-

signment of it to trustees in trust for himself, this gives him the legal interest in the lands during the continuance of the term, absolutely discharged from, and unaffected by any of the purchases, mortgages, and other incumbrances subsequent to the creation of the term, but prior to his own purchase: i. e., by the assignment of such term to attend the inheritance, it will protect A., the purchaser, from all mesne or middle incumbrances. But A., to entitle himself in equity to the benefit of such term, must be a purchaser for a valuable consideration, his purchase must be free from every kind of fraud, and he must not have had any notice of the prior conveyance, mortgage, charge, or other incumbrance. But see **TERMS FOR YEARS**.

Mortgages, so far as equity is concerned in them, may be treated of under redemption, foreclosure, and equitable mortgages.

The mortgagor, at common law, was subjected to great hardships, if he did not strictly fulfil the condition of the mortgage, by repaying the money borrowed with interest and expenses, at the very time specified; for he forfeited to the mortgagee the inheritance or the term, as the case might be, however great its intrinsic value compared to the money advanced. But equity interposed itself to prevent such manifest injustice, and treated the mortgage as a mere security for the debt; that the mortgagee held the estate, although forfeited at law, as a trust; that the mortgagor had an equity of redemption, which was in the nature of a trust estate, grantable, deviseable, and entailable by the mortgagor, and liable to courtesy, and since the late Dower Act, also to dower; and that this equity of redemption might be enforced against the mortgagee by the mortgagor, his heirs, executors, assigns, or subsequent incumbrancers, and in fact by all persons claiming any interest whatever in the premises, as against the mortgagor; the application to be made by bill to redeem, offering to pay the debt and all equitable charges, to be filed within a reasonable time.

So inseparable is the right of redemption from the mortgage, that it cannot be disannexed, even by an express agreement of the parties. "You shall not," said Lord Eldon, "by special terms alter what this court says are the special terms of this contract." If, therefore, it should be expressly agreed, that unless the money should be repaid at a particular day, the estate should be irredeemable, the agreement would be utterly void. But by the 4 & 5 W. & M., c. 16, § 2, if any person who hath suffered any judgment or recognizance which may bring a charge upon the land, to be entered against him, mortgage his estate without giving notice of the prior encumbrance, such mortgagor forfeits his equity of redemption; and the same punishment is visited upon the mortgagor, who, effecting a second mortgage upon his estate, suppresses the fact of the first mortgage.

Equity cannot protect a mortgagor in his fraud. Mr. Chancellor Kent, in his Commentaries upon the Equity of Redemption, thus eloquently speaks:—"The case of mortgages is one of the most splendid instances in the history of our jurisprudence, of the triumph of equitable principles over technical rules, and of the homage which those principles have received by their adoption in the courts of law. Without any prophetic anticipation, we may well say, that 'returning justice lifts aloft her scale!'"

A Welch mortgage (seldom resorted to) has a perpetual power of redemption, subsisting for ever, and the mortgagee cannot compel a redemption or foreclosure. This mortgage is without a covenant to repay the mortgage money. In all other mortgages, where a mortgagee has been in possession twenty years, without any impediment in the mortgagor to assert his title, such as imprisonment, infancy, coverture (in the case of a wife), or being beyond sea (where it is not by having absconded), or if such impediment have been removed ten years, it is a bar to a redemption. But if there have been acknowledgments within the twenty years, that the estate was held in mortgage, and accounts have been kept, a redemption will never be barred.

The doctrine of tacking mortgages is somewhat inequitable, but it is this:—If a third mortgagee buy in the first mortgage, he acquires a title in law, and having equal equity, will (to use the language of the text-books) "squeeze out the second mortgagee," always provided that such third mortgagee has no notice of the second mortgage. Or thus:—If a first mortgagee lend a further sum to the mortgagor, by way of surcharge, or upon a judgment, he may retain not only against the mortgagor, but against a *mesne* mortgagee (he having no notice thereof) till the mortgage and judgment be satisfied. Where A. has two mortgages on different independent estates, one a deficient, and the other more than sufficient, the mortgagor cannot redeem the latter without making good the deficiency of the other security, nor where there are two separate mortgages of different estates to the same person, can the purchaser of the equity of redemption of one of them redeem that mortgage only; if he redeem at all, he must redeem both. The mortgagee has a right of foreclosure, by which the mortgagor's rights are extinguished, and the absolute dominion of the property passed to the mortgagee. Equity will not decree a compulsory sale against the mortgagor, as a general rule, except in certain cases, as where the estate is deficient or the mortgagor is dead, and the personal estate is inadequate, or the estate has descended to an infant; or the mortgage is of a dry reversion, or of an advowson; or where the mortgagor bankrupts, and a sale is prayed, or where the mortgage is equitable, or where the mortgage is of land, and by the local law is subject to a sale, as in

Ireland or America. But if a power of sale upon default of payment be inserted in the mortgage-deed, then all inconvenience is obviated; and this is now the practice.

Equity will imply mortgages, from the nature of the transactions between the parties, and then they are termed *equitable mortgages*. Thus, if a debtor deposit his title deeds to an estate with a creditor, with or without a written memorandum, it is held to be a valid agreement for a mortgage between the parties, and is not within the operation of the Statute of Frauds. Such deposit will cover subsequent advances, if it appear by clear evidence that they were made upon the faith of such security, or rather, that the original deposit was made with an agreement for a further advance. This doctrine has been received with great disapprobation, and a disposition has lately been evinced to narrow its operation. And so long as Lord Cottenham's judgment, in *Whitworth v. Gaugain*, remain uncontradicted, equitable mortgages were not deemed any security whatever; for, according to his lordship's *dictum*, a judgment creditor, without notice, in possession of the estate under an *elegit*, has preference to an equitable incumbrancer, by deposit of title deeds, with a prior charge; it appears obvious that such a preference would have existed as against all other mere equitable interests. This *dictum* was misunderstood, as the Chancellor did not mean to convey such an impression. The trusts arising under general assignments for the benefit of creditors, are also the objects of equity jurisdiction, which enforces a discovery and an account from the trustees, and distributes the whole funds in their proper order among all the claimants, upon the application of any one of them, either on his own behalf, or on behalf of himself and all the other creditors.

A *chose in action*, i. e., a thing of which a person has not the possession or actual enjoyment, but has a right to demand the same by action, cannot be assigned or granted over at common law, except in the case of the Crown, and except negotiable instruments, such as a bill of exchange or a promissory note, for the convenience of commerce; but in equity it may, for a consideration, be assigned, even by parol, and is good against creditors under a bankruptcy. It is usual for the assignor to give the assignee a power to sue for the *chose in action* in his, the assignor's, name. The assignee should immediately give notice of the assignment to the debtor; for, in the absence of such notice, the debtor may pay the original creditor.

The express trusts which are created of real or personal property in *wills and testaments*, are most usually for the security of the rights and interests of infants, *femes covert*, children, and other relations, for the payment of debts, legacies, or portions; for the sale or purchase of real estate; for the benefit of heirs or others having claims upon

the testator; or for objects of general or special charity. Very embarrassing questions relating to these voluminous transactions are frequently brought before the court, and curious are the doctrines mooted as to the nature and extent of limitations of trusts in wills. Whether an estate in fee, in tail, or for life, or otherwise, passes by the devise, the quantity of the estate is decided by the same rules as in courts of law, whether the devise be of a legal or a trust estate, except in the case of executory trusts—there being this difference between what are termed trusts executed and executory trusts. A trust executed is where the testator has given complete directions for settling his estate with perfect limitations. An executory trust, is where the testator's directions are incomplete, and are rather minutes or instructions. In the case of trusts executed, legal expressions will have a strict legal effect, as in immediate devises at law, though perhaps contrary to the testator's intention; but in cases of executory trusts, equity will consider the intention, and direct the conveyance according to it.

It is in wills that the doctrine of *election* and *satisfaction* most frequently arises. *Election*, in this sense, means the obligation imposed upon a party to choose between two inconsistent or alternative rights or claims, where there is a *clear intention* of the person from whom he derives one, that he should not enjoy both. Everything depends upon the language of the will. The principle is, that a person shall not claim an interest under an instrument, whether it be a deed or will, without giving full effect to that instrument, so far as he can: for instance, if a testator give what is not his property, but which he supposes to be his, and gives to the person whose property it is an interest by his will, such person will not be permitted to defeat the disposition, when it is in his power, and yet take under the will, but he must make his election; and the same principle applies, though the testator knew he had no right to dispose of the property, and yet knowing, takes upon himself so to dispose of it. Where a person has made an election, and proceeds, contrary to such election, to recover the property at law, an injunction will be granted to restrain him. The doctrine of election is equally applicable to all interests, whether they are immediate or remote, vested or contingent, of value or of no value, or whether these interests be in real or personal estate; but it is not applicable to creditors.

Satisfaction may be defined to be the donation of a thing, with the intention, express or implied, that it is to be an extinguishment of some existing right or claim of the donee. Questions of satisfaction have thus been classed:—1st, in cases of portions secured by a marriage settlement: for instance, where a provision is secured to a child by a marriage settlement, and the parent (or person *in loco parentis*) afterwards,

by will, gives the same child a legacy, without expressly directing it to be in satisfaction of such provision. If the legacy be of a sum as great or greater than the provision, if it be *ejusdem generis*, equally certain and subject to no contingency not applicable to both, and it cannot be shown that it is given for a different purpose, it will be deemed a complete satisfaction. And if the legacy be less in amount than the provision, or be payable at a different period, it seems that it will be deemed a satisfaction *pro tanto*. 2nd. In case of portions given by a will, and an advancement of the donee afterwards, in the life of the testator; as where a parent, or other person *in loco parentis*, bequeaths a legacy to a child, and afterwards, in his lifetime, makes a provision for the same child, without expressing it to be in lieu of the legacy, then if such provision be equal to or exceed the amount of the legacy; if it be *ejusdem generis*, certain, and not contingent, and no other distinct object be pointed out, it will be deemed a satisfaction, or more properly an ademption of the legacy. And if the provision be less than the legacy, it will be deemed a satisfaction *pro tanto*. It is to be observed that grandchildren, brothers, sisters, uncles, aunts, nephews, and nieces, as well as natural children, are deemed strangers to the testator in the sense of the rule (unless he has placed himself towards them *in loco parentis*). They are, therefore, in a better position, not only than legitimate children, but even than they would be if the testator formally acted *in loco parentis*. The propriety of this doctrine has been seriously questioned by many of our lord chancellors, but it is so generally established, that it cannot be shaken but by overthrowing a mass of authority, which no Judge would feel himself at liberty to disregard. 3d. In cases of legacies to creditors. Where a legacy operates as a satisfaction of a debt owing to a legatee, it must be equal to or greater in amount than the existing debt, equally beneficial, of the same nature, i. e., land cannot be taken in satisfaction for money, nor money for land; it must also be certain and not contingent, and payable immediately, and no particular motive can be assigned for the gift. The legacy, however, will not satisfy a debt if it be of less amount, not even *pro tanto*; nor where there is an express direction in the will for the payment of debts; nor where the bequest is of a residue; nor where the debt is a negotiable security; nor upon an open and running account. The ground of this doctrine is more intelligible than in the foregoing cases; and it is that a testator shall be presumed to be just before he is kind or generous.

It will be convenient in this place to state the principle upon which purchasers are bound to look to the due application of the purchase money, inasmuch as the question arises in cases of trust under wills, although it equally applies to other trusts

created *inter vivos*. 1st. As to personal estate, including leaseholds, the personal estate being "*the natural fund*" for the payment of testator's debts *generally*, a *bona fide* purchaser (without notice of the debts, and without collusion with the executor), either of the whole or any part of it, is not bound to see his purchase money applied by the executor for the payment of debts. 2d. As to real estate; where there is a *general* devise for the payment of debts, the purchaser is not bound to look to the application of his purchase money, because of the unlimited nature of the trust. But where the trust is for the payment of legacies, or of specified or scheduled debts, the case is different, for they are ascertained, and the purchaser is bound to see his purchase money actually applied in discharge of them, unless a clause is inserted in the trust-deed or will, declaring that the trustees' receipts of the purchase money shall be sufficient discharges to purchasers; and this clause, giving to the trustees the right to receive the money, without any further responsibility on the part of the purchaser, is now universally inserted in well drawn instruments.

The second great division are *implied* trusts, including constructive and resulting trusts. It is a general rule that equity never presumes or implies a trust as intended by the parties, unless taking all the circumstances together, that is the fair and reasonable interpretation of their acts and transactions.

The two general classes of implied trusts are first:—those which stand upon the presumed intention of the parties. For instance, if money or other property be delivered by one person to another, to be by the latter paid or delivered over to and for the benefit of a third person; the person receiving the money or other property holds it upon an implied trust, in favour of such third party, although no express agreement has been entered into to such effect. Where certain trusts are created by will or deed, which fail in whole or in part, or which are so indefinite that equity cannot carry them into effect, or which are illegal, or fully executed, leaving an unexhausted residuum, in all such cases a resulting trust will arise to the party creating such trusts or to his heirs and legal representatives. Where a person buys land in the name of another, and pays the consideration money, the land will generally be held by the grantee in trust for the person who so pays the consideration money. "It is," says Lord *Hardwicke*, "a certain known rule, that when a man purchases land in the name of another, it is a resulting trust." This doctrine, however, is strictly limited to cases where the purchase has been made in the name of one person, and the purchase money has been paid by another. For if a person employ another *by parol* as an agent to buy an estate for him, and the agent buys it in his own name, and the principal pays no part

of the purchase money, then, if the agent deny the trust, and there is not any written agreement or document to establish it, the agent cannot be compelled to convey the estate to the principal, for it would be positively a violation of the Statute of Frauds. There is an exception to the doctrine of a resulting trust in the Ship Registry Acts; for if A. purchase a ship in the name of B., and the sale is registered in the name of B., B.'s title cannot be dislodged.

But a resulting trust may be rebutted by circumstances in evidence, thus, if a parent should purchase in the name of a son, the purchase would *prima facie* be deemed as intended for an advancement, so as to rebut the presumption of a resulting trust to the parent; and this presumption of advancement is stronger in the case of a wife than of a child, for a wife cannot at law be a trustee for her husband.

In the case of joint-purchases made by two persons, who pay the purchase money in equal proportions, and take a conveyance to them and their heirs, it constitutes, at law and in equity, a joint-tenancy, and of course the survivor takes the whole estate; but, if they pay unequal proportions of the purchase money, in case of the death of either of them, there will be no survivorship, for equity will hold the survivor to be a trustee for the representatives of the party deceased, in proportion to the sum advanced by him. And in all other cases of a joint undertaking, or partnership, either in trade or in any other commercial dealing, they will be considered as tenants in common, or the survivors as trustees for those who are dead, in expansion of the great common law maxim, *Jus accrescendi inter mercatores, pro beneficio commercii, locum non habet*. If a creditor appoint his debtor executor, the debt is extinguished at law, and cannot be revived; but in equity the executor is, as to creditors and legatees, on a deficiency of assets, considered as a trustee in respect of his debt, and accountable for it, as a part of the testator's personal estate. Whatever acts are done by trustees in regard to the trust property shall be deemed to be done for the benefit of the *cestui que trust*, or beneficiary, and not for the trustee's benefit.

The second general class of implied or rather constructive trusts, are those that are forced upon the conscience of the party by the mere operation of the law; as, where a party has received money, which he cannot conscientiously withhold from another party, equity will raise a trust in favour of the party for whom or on whose account it was received. This prevailing principle is familiarly illustrated in cases of money paid by accident, mistake, or fraud. It is also a comprehensive rule in equity, that all persons coming into possession of trust property, with notice of the trust, shall be considered as trustees, and bound, with respect to that special property, to the execution of the trust.

A trustee is bound, by his implied obligation, to perform all those acts which are necessary and proper for the due execution of the trust which he has undertaken. If he do not exactly know what his precise duty is, he should seek the direction and aid of a court of equity, to assist him in carrying out the execution of the trusts. The *cestui que* trust, or person beneficially, though not legally, interested, can in no case sue his trustee at law, for any misconduct, but must file a bill in equity. The general rule is that trustees are responsible only for their own acts, and not for the acts of each other, unless they have made some agreement by which they have expressly agreed to be bound for each other, or they have, by their own voluntary co-operation or connivance, enabled one or more to accomplish some known object in violation of the trust. At law, if a trustee join in a receipt, he will be charged with the fund, because he appeared to have a power over it; but in equity the rule is different, for, though *prima facie* both are liable, yet, if two trustees join in receipts or conveyances, and it is proved that one of them only received the money, that party is solely liable, as the other joined purely for the sake of conformity. The rule is different as to executors; for if two executors join in receipts and conveyances, and one only receives the money, yet both are liable to creditors and legatee; the reason of this difference is this:—trustees have all equal power, interest, and authority, and cannot act separately as executors may, but must join in receipts and conveyances. One trustee cannot sell without the other, or make a claim to receive more of the consideration money, or to be more a trustee, than the other. But executors are not compellable to join in receipts, and each is competent, by his own separate receipt, to discharge any debtor to the estate. If, then, executors join in a receipt, it is their own voluntary act, and equivalent to an admission of their willingness to be jointly accountable for the money. Where one executor receives the whole or part of the testator's estate, and pays it over voluntarily and unnecessarily to his co-executor, and the same is lost or embezzled, he who so paid it over is answerable with the other, unless he can assign a sufficient excuse.

The office of trustee is considered as honorary, and it is an established rule that a trustee, executor, or administrator shall have no allowance for his care or trouble unless there be some provision for that purpose in the deed or will, creating the trust; for there would be great difficulty in estimating the *quantum* of such allowance, as one man's time is more valuable than that of another, and by such allowance the trust estate might be loaded and rendered of little value. There is not, perhaps, any great hardship in this rule, since a trustee is not compellable to accept the trust, but

may renounce it if he think proper; although if he once accept the trust, equity will compel him to perform it. An attorney, being an executor, will not be allowed law expenses, in respect of business transacted by himself relative to the testator's affairs. It is, however, an established rule, that the *cestui que* trust or beneficiary save the trustee harmless, as to all the costs and charges incurred in carrying out the trust. *Madd. Chan.*, tit. "Trusts."

TUB-MAN, a barrister who has a pre-audience in the Exchequer, and also a particular place in court.

TUMBRELL, a castigatory.

TUMULTUOUS PETITIONING. By 13 Car. II., st. 1, c. 5, it is enacted, that not more than twenty names shall be signed to any petition to the king, or either house of parliament, for any alteration of matters established by law in church or state; unless the contents thereof be previously approved, in the country by three justices, or the majority of the grand jury at the assizes or quarter sessions; and in London by the lord mayor, aldermen, and common council; and that no petition shall be delivered by a company of more than ten persons, on pain, in either case, of incurring a penalty not exceeding 100*l.* and three months imprisonment. See 57 Geo. III., c. 19, § 23.

TUNGREVE, a town-reeve or bailiff.

TURBURY, the liberty of digging turf.

TURN or TOURN, the great court leet of the county, as the county court is the court baron; of this the sheriff is Judge, and this court is incident to his office; wherefore it is called the sheriff's tourn; and it had its name originally from the sheriff's making a turn or circuit about his shire, and holding this court in each respective hundred. 2 *Hawk. P. C.*, c. 10.

TURNING TO A RIGHT, where a person's possession of property cannot be restored by entry, but can only be recovered by action.

TURNKEY, a gaoler.

TURNPIKE ROADS. These do not generally fall within the operation of the Highway Act, 5 & 6 Wm. IV., c. 50, but are regulated primarily by the local acts, relative to each particular road, which, though temporary, are renewed by the legislature from time to time as they are about to expire; and in the next place by statutes of a general description, applicable (with very few exceptions) to all turnpike roads, that is all roads maintained by tolls, and placed under the management of trustees or commissioners for a limited period of time. *Northam Bridge and Road Company v. London and Southampton Railway Company*, 6 M. & W. 428.

TURPIS CAUSA, a base or vile confederation on which no action can be founded.

Turpis est pars quæ non convenit cum suo toto. Plow. 161.—(That part is bad which accords not with its whole.)

Tuta est custodia quæ sibi met creditur. Hob. 340.—(That guardianship is secure which trusts to itself alone.)

TUTELAGE, guardianship; state of being under a guardian.

Tutius erratur ex parte mitiore. 3 Inst. 220.

—(It is safer to err on the gentler side.)

Tutius semper est errare acquitendo quam in puniendo, ex parte misericordiae quam ex parte justitiae. H. H. P. C. 290.—(It is always safer to err in acquitting than in punishing: on the side of mercy, than of strict justice.)

TUTOR, a guardian; an instructor.

TWANIGHT GESTE, a guest at an inn a second night.

TWELFHINDI, the highest rank of men in the Saxon government, who were valued at 1200s.; and if any injury were done to such persons, satisfaction was to be made according to their worth.

TWYHINDI, the lower order of Saxons, valued at 200s., as to pecuniary mulcts inflicted for crimes.

TYHSLAN, an accusation, impeachment, or charge.

TYLWITH, a tribe, house, or family.

TYTHE, tithe, or tenth part.

TYTHING, a company of ten; a district; a tenth part. See **TITHING**.

U

Ubi aliquid impeditur propter unum, eo remoto, tollitur impedimentum. 5 Co. 77.—(Where anything is impeded by some one particular cause, that cause being removed, the impediment is taken away.)

UBICATION or **UBIETY** [*ubi*, Lat., where], local relation; whereness. *Encyc. Lond.*

Ubi cessat remedium ordinarium ubi decurritur ad extraordinarium. 4 Co. 93.—(Where a common remedy ceases, there recourse must be had to an extraordinary one.)

Ubi eadem ratio ibi idem lex, et de similibus idem est judicium. 7 Co. 18.—(Where the same reason exists, there the same law prevails; and of things similar, the judgment is similar.)

Ubi culpa est ibi poena subesse debet. Jenk. Cent. 325.—(Where there is culpability, there punishment ought to be submitted to.)

Ubiunque est injuria ibi damnum sequitur. 10 Co. 116.—(Where there is an injury, there a loss follows.)

Ubi damna dantur, victus victori in expensis condemnari debet. 2 Inst. 289.—(Where damages are given, the losing party should be condemned in costs to the victor.)

Ubi factum nullum ibi sortia nulla. 4 Co. 43.—(Where there is no deed, there can be no consequences.)

Ubi lex aliquem cogit ostendere causam necesse est quod causa sit justa et legitima. 2 Inst. 269.—(Where the law compels a man to show cause, it is incumbent that the cause be just and legal.)

Ubi lex est specialis, et ratio ejus generalis, generaliter accipienda est. 2 Inst. 43.—

(Where the law is special, and the reason of it general, it ought to be taken as being general.)

Ubi lex non distinguit, nec nos distinguere debemus. 7 Co. 5.—(Where the law distinguishes not, we ought not to distinguish.)

Ubi major pars est ibi totum. Moor. 578.—(Where the greater part is, there the whole is.)

Ubi non est annua renovatio, ibi decime non debent solvi.—(Where there is no annual renovation, there tithes should not be paid.)

Ubi non est condendi auctoritas, ibi non est parendi necessitas. Dav. 69.—(Where there is no authority to enforce, there is no necessity to obey.)

Ubi non est directa lex, standum est arbitrio judicis, vel procedendum ad similia. Ellesm. Postn. 41.—(Where there is no direct law, the opinion of the Judge is to be taken, or references to be made to similar cases.)

Ubi non est lex ibi non est transgressio, quoad mundum. 4 Co. 16.—(Where there is no law there is no transgression, as far as relates to society.)

Ubi non est principalis non potest esse accessorius. 4 Co. 43.—(Where there is no principal there cannot be an accessory.)

Ubi nullum matrimonium, ibi nullum dos. Co. Lit. 32.—(Where there is no marriage, there is no dower.)

Ubi jus ibi remedium. Co. Lit. 197, 4.—(There is no wrong without a remedy.)

Ubi quid generaliter conceditur, inest hæc exceptio, si non aliquid sit contra jus fasque. 10 Co. 78.—(Where a thing is conceded generally, this exception arises, that there shall be nothing contrary to law and right.)

Ubi quis delinquit ibi punietur. 6 Co. 47.—(Let him be punished where he commits an offence.)

UDAL, allodial: which see.

ULLAGE, [*uligo*, Lat., ooziness], the quantity of fluid which a cask wants of being full, in consequence of the oozing of the liquor. *Malone*.

ULNAGE, alnage: which see.

ULNA FERREA, the standard ell of iron, kept in the Exchequer for the rule of measure. *Mon. Angl.* ii. 383.

ULTIMATUM or **ULTIMATION**, the last offer; concession or condition.

Ultima voluntas testatoris est perimplenda secundum veram intentionem suam. Co. Lit. 322.—(The last will of a testator is to be fulfilled according to his true intention.)

ULTIMUM SUPPLICIUM, the last or extreme punishment; death.

ULTIMUS HÆRES, the last heir; this is the sovereign who succeeds, failing all relations.

Ultra posse non est esse: et vice versa. Wing. Max.—(What is beyond possibility cannot exist: and so contrariwise.)

UMPIRAGE, friendly decision of a controversy; arbitration.

UMPIRE, one who is chosen by two, four, or any even number of arbitrators (on their being equally divided on their award), to

give his casting vote: it is a variation of *impar*, Lat., for odd. *Cleland Voc.* 156.

Una persona viz potest supplere vices duarum. 7 Co. 118.—(One person can scarcely supply the places of two.)

UNCEASESATH [*ceas*, Sax., prosecution, *un*, without, and *ath*, oath], an oath by relations not to avenge a relation's death. *Blount*.

UNCORE PRIST, the plea of a defendant in nature of a plea in bar, where, being sued for a debt due on bond at a day past, to save the forfeiture of the bond, he says that he tendered the money at the day and place, and that there was none there to receive it, and that he is also still ready to pay the same.

UNCUTH [Sax.], unknown.

UNDE NIHIL HABET. See **DOWER**.

UNDER CHAMBERLAINS OF THE EX-CHEQUER, two officers that cleaved the tallies written by the clerk of the tallies, and read the same, that the clerk of the pell and comptrollers thereof might see their entries were true. They also made searches for records in the treasury, and had the custody of Domesday Book. Abolished.

UNDER LEASE, a grant by a lessee to another of a part of his whole interest under the original lease, reserving to himself a reversion, it differs from an assignment, which conveys the lessee's whole interest, and devolves upon the assignee the responsibility of the covenants in the original lease.

UNDER-SHERIFF [*sub-vicecomes*], the sheriff's deputy. See **SHERIFF**.

UNDER-TENANT, one who holds, by underlease, from a lessee.

Between the original lessor and an under-tenant there is neither privity of estate nor privity of contract, so that these parties cannot take advantage, the one against the other, of the covenants, either in law or in deed, which exist between the original lessor and lessee. *Watk. Conv.* 308.

UNDER TREASURER OF ENGLAND [*vice-thesaurarius Angliæ*], he who transacted the business of the Lord High Treasurer.

UNDERWRITER, an insurer, so called from writing his name under the conditions.

UNDRESS, minors or persons under age not capable of bearing arms. *Fleta*, l. i. c. 9.

UNFRID [Sax.], one who has neither peace nor quiet.

UNGELD, an outlaw.

UNIFORMITY OF PROCESS ACT, 2 Wm. IV., c. 39.

UNIGENITURE, the state of being the only begotten.

UNION, *clause of*, a clause in an infeftment, whereby lands or tenements lying discontinuous are incorporated, so that one seisin may suffice for them all. *Scotch Phrase*.

UNITY OF POSSESSION, where one has a right to two estates, and holds them together in his own hands, as if a person take a lease of lands from another at a certain rent, and afterwards buys the fee simple, this is an

unity of possession by which the lease is extinguished, because that he who had before the occupation only for his rent, is now become lord and owner of the land. *Termes de Ley*. See **JOINT TENANCY**.

Universalis sunt notiora singularibus. 2 Rol. Rep. 294.—(Things universal are better known than things particular.)

Universitas vel corporatio non dicitur aliquid facere nisi id sit collegialiter deliberatum, etiam si major pars id faciat. Dav. 48.—(An university or corporation is not said to do anything unless it be deliberated upon collegiately, although the majority should do it.)

UNIVERSITY, a corporation; a school where all kinds of literature are taught.

UNLAGE [Sax.], an unjust law.

UNLAWFUL ASSEMBLY, any meeting of great numbers of people, with such circumstances of terror as cannot but endanger the public peace, and raise fears and jealousies among the subjects of the realm. 4 *Step. Com.* 278.

UNLIQUIDATED DAMAGES, penalties.

UNNATURAL OFFENCE, the infamous crime against nature.

Uno absurdo dato, infinita sequuntur. 1 Co. 102.—(One absurdity being allowed, an infinity follow.)

Unumquodque eodem modo quo colligatum est dissolvitur, quo constituitur, destruitur. 2 Rol. Rep. 39.—(In the same manner in which any thing is bound, it is loosened; by that which constitutes it, it is destroyed.)

Unumquodque est id quod est principalius in ipso. Hob. 123.—(That which is the principal part of a thing is the thing itself.)

Unumquodque principiorum est sibi metipsi fides: et, perspicua vera non sunt probanda. Co. Lit. 11.—(Whatever is accounted as a principle is taken for granted to be founded in truth, and plain truths are not proved.)

UNWHOLESOME PROVISIONS, the selling of, an offence against public health. 51 Hen. III., st. 6; 12 Car. II., c. 25, § 11; 1 W. & M., st. 1, c. 39, § 20; 3 Geo. IV., c. 106; and 6 & 7 Wm. IV., c. 37.

UNQUES PRIST. See **UNCORE PRIST**.

URBAN SERVITUDES, tenures in cities.

URE, custom, practice, habit.

USAGE, practice long continued.

USANCE [Fr.], the time which it is the usage of the countries, between which bills are drawn, to appoint for payment of them. According to the language of merchants, "usance" signifies a month.

The length of the usance or time which it includes, varies in different countries from fourteen days to one, two, or even three months after the date of the bill. Double or treble usance is double or treble the usual time, and half usance is half that time: when it is necessary to divide a month upon an half usance, the division, notwithstanding the difference in the length of the month, contains fifteen days. It has been said that the court could not take judicial notice of foreign usances, which

vary, being longer in one place than another, and therefore certainly the duration must be averred and proved.

	Cal. Months after date.	Days after date.	Days after acceptance.
A usance between London and—			
Aleppo (sometimes accounted as treble usance) is ...	1		
Altona	1		
America (North) said to be ..		60	
Amsterdam	1		
Antwerp	1		
Berlin			14
Bilboa	2		
Brabant	1		
Bruges	1		
Cardiz	2		
Constantinople and Smyrna ..		31	
Flanders	1		
Florence (sometimes accounted as treble usance) ..		30	
France		30	
Frankfort on the Main			14
Geneva	1		
Genoa	3		
Hamburg	1		
Holland	1		
Leghorn	3		
Lisbon	2		
Lisle	1		
Lucca	3		
Madrid and all Spain	2		
Middleburgh	1		
Milan	3		
Palermo, 3 calendar months after date, or		90	
Paris	1		
Petersburg, none.			
Portugal	2		
Rome	3		
Rotterdam	1		
Rouen	1		
Spain	2		
Trieste, same as Vienna.			
Venice	3		
Vienna			14
West Indies			31
Zante	3		
Zealand	1		
Usance between Amsterdam and Brabant, France, Flanders, and Holland, or Zealand ..	1		
Frankfort, Nuremberg, Vienna, and other places in Germany, on Hamburg and Breslau, 14 days after sight; two usances, 28 days; and half usance, 7 days.			
Italy, Spain, and Portugal ..	2		
Chitty on Bills, c. 9.			

cular wants of a commercial and enterprising people, who were anxious, for their credit's sake, to transfer their property privately, and without the knowledge of their neighbours, to evade forfeitures for treason, which were frequent during the eventful civil wars of the Red and White Roses; and also to dispose of their property by will: add to these the efforts of the ecclesiastics to increase their possessions, and to evade the Statutes of Mortmain, and you have the chief causes of introducing uses and trusts into this kingdom. It is not our purpose to enquire whether their introduction originated in fraud or not, or whether their continuance proceeded from honest anxiety to preserve one's own.

The nature of uses and trusts is derived from the civil law. If we compare the rise and history of the *fidei-commissa* of the Roman law, introduced by Augustus, to the origin and progress of our laws of uses and trusts, we shall see that they greatly resemble one another. The *direct* substitution or *fiduciary* bequest, or, according to the Roman law, the *fidei-commissa hæreditas*, is the substitution, nearly coincident with our explanation of uses and trusts; and it is particularly to this sort of substitution that we owe the introduction of uses, about the reign of our second Richard.

Now, this is a definition of a use before the Statute of Uses, a *trust* or *confidence*, which was not issuing out of land, but as a thing collateral, annexed in privity to the estate, and to the person touching the land, that *cestui que use* shall take the profits, and that the terre-tenant shall make estates according to his direction, and plead such pleas as he should supply him with, at the costs and expences of the *cestui que use*, who had neither *jus in re*, nor *ad rem*, i. e., neither a right in possession, nor in action, but only a confidence and trust, which the common law, though it took notice of, would not protect, nor give him any remedy for; but his remedy was in Chancery, which will not suffer a right in conscience to be without a remedy. Though a *use* be properly defined to have been a *trust*, yet, it may be material to observe, that, even before the statute, there was a clear and established distinction between uses and trusts, uses being of a *permanent* and *general* nature, and a regular system being adopted with respect to them, even at the common law; and trusts being of a *special*, or *collusive* and *transitory* nature, and never having been noticed, either before or since the statute, at common law, and not being there of the smallest consideration: the one being alienable, the other not; and the one, not being capable of being limited on a term, which the other might. The true difference in their creation, before the statute, was this:—a use was properly so called, when a person made a feoffment *in fee* to a friend, by which the *possession* or *seisin* being transferred to the feoffee, the feoffor placed a confidence in him to permi

USE. We learn that simplicity was the great character of the common law, both in the estates to be created, and the manner of creating them; and that from its inflexibility, it did not accommodate itself to the parti-

such person or persons as he should or had named to receive the profits, and also to make such *legal* estates as such person or persons should direct. Now this confidence was the use: for you observe the feoffee had a *permanent estate in fee* in the lands, subject to the use or distribution of the profits. This use, on account of its dividing the land into two estates, viz.:—an estate in the land, and an estate in the use or profits, was reduced into a regular system; but a *trust* did not, in its *original* meaning, make this regular division of property into use and possession, but it rather signified that a person had made a conveyance of his lands to another, by which conveyance he not only gave the *possession*, but also the *use* or right to take the profits to the grantee: but there was a kind of *personal* trust reposed in the grantee, that he would retain both the possession and the use, in order to answer some *special* interest or purpose.

The following is a sketch of the requisites observed in raising uses before the statute:—There should be a person or persons capable of standing seized to a use. The Queen or a corporation, tenants by the courtesy, or in dower, &c., could not be seized. There should also be a person capable of receiving or taking such use, but, whoever is capable of taking the *land* itself, could always take the same estate by way of *use*. There should be, generally, a consideration to raise a use. To raise a use, there should be a sufficient substance or thing, out of which the use may arise. The properties of uses at common law are these:—They were descendible according to the rules regarding estates of inheritance; they were also considered as chattels, and held to be devisable as such, before the Statute of Wills (32 Hen. VIII., c. 1, explained by 34 Hen. VIII., c. 5), thereby, under the colour of allowing a devise of the use, in effect, permitting the land itself to be devised, for the devisee of the use had all the advantages which *cestui que* use himself had. As *cestui que* use might devise the use, so might he alien or transfer it at the common law. A use, at common law, was held to be neither *jus in re* (*i. e.*, an estate), nor *jus in rem* (*i. e.*, a demand.) The use did, in many instances, ensue or follow the nature of the land; for instance, if a man, seized of lands on the part of the mother, made a feoffment without any consideration or declaration of the use, and then took back an estate to him and his heirs on the part of his father, still, as the use was never out of the feoffor, it continued in him as of the old use, and would descend to the heirs on the mother's side. Uses, like the land, might have been limited, destroyed, or suspended, upon a contingency. These remarks will, it is hoped, give a sufficient idea of the nature of uses before the statute, so as rightly to understand their peculiar learning, as well as that of trusts since the statute, which has created the refinements with which settlements of real property are now connected.

Uses, at this period of legal history, had many evils attending them, the most mischievous being, that lands and hereditaments were secretly conveyed from one to the other, by way of use, without the formal and notorious ceremony of livery of seisin;—uses were devised by mere words, and sometimes by signs in great extremities;—heirs were oftentimes disinherited by fraudulent uses, effected by ecclesiastical terrors working upon superstitious fears;—lords lost their wards, marriages, reliefs, and all the fruits and benefits of their seigniories;—no purchaser could be assured of his purchase;—no man knew against whom to bring his action or have execution; estates created by law in consideration of marriage, as tenancy in dower and by the courtesy, were destroyed; perjuries for trial of secret uses were committed; the Crown lost the benefit of escheats by attainder, purchases by aliens, wards, &c., and lords also lost their escheats. To remedy these inconveniences, the 27 Hen. VIII., c. 10, was passed, commonly known as the Statute of Uses, directing the modern system of conveyancing, and resembling, in effect, the two decrees of the Roman Senate, called *Senatus Consultum Trebellianum et Pegasusium*, for while these decrees rendered the estate of *cestui que* trust in every respect equivalent to the legal ownership, the statute drew the possession to the use, and, as it were, incorporated them. Observe, the *possession* does not now draw the *use*, as it did before the statute, but the *use* the *possession*, therefore, to whomsoever the use is declared, the possession is likewise carried, so that the use governs the possession. There has been great controversy among legal philosophers as to the intention of the legislature in passing this act, but whatever object the law-makers of that æra of our history had in view, the statute did not abolish uses, nor alter the manner of raising them; it only destroyed the intervening estate of the feoffee; for example, if a feoffment be made to A. in fee, to the use of B., B. at once, by force of the statute (which executes the possession to the use, and makes the estate of *cestui que* use a *legal* instead of an *equitable* estate), takes the legal estate, and A.'s, the feoffee's, estate is destroyed, he has no interest in the land, which cannot, on *his* account, escheat or be forfeited, neither can it be alienated nor subjected either to dower or courtesy on account of his momentary seisin; he has been called a mere conduit pipe.

Before a use can be executed by the statute it should be raised in accordance with the rules which have been mentioned as governing the creation of uses before the statute. There must be, therefore, a consideration to raise or declaration of the use, a person capable of standing seized to, and of receiving a use, and there must be a proper hereditament out of which it may be raised, before any use can be executed by the statute. It follows from these rules,

that if there be no seisin in the feoffees, no *cestui que use in esse*, no use in *esse*, or the estate of the feoffees cannot vest in *cestui que use*, there cannot be any execution of the use by the statute, and, therefore, contingent uses cannot be executed.

To constitute a joint tenancy at common law, it is essential that the unity should be complete in *time* as well as *estate*: the estates of the joint tenants must be vested at one and the same period, as well as by one and the same title. But this unity of time is not an essential incident to estates taking effect under this statute, for Lord Thurlow held that the vesting of the estate at different times would not prevent joint tenancy, and, therefore, where a use is limited to several persons jointly, they will take the legal estate jointly, although born at different times, for example, lands were limited to the following uses:—to A. and B. his wife, for their lives, remainder to their first and other sons in tail, remainder to the issues female of their bodies begotten. A. had two daughters, Jane and Emma: it was held that Jane and Emma took as joint tenants for life, with several inheritances, and the time of vesting was thought unimportant: the seisin remained in the feoffee to uses, until the uses arose.

The statute also introduced shifting, secondary, and springing uses, which were in direct opposition to the common law maxims in reference to the creation of estates; for the common law did not admit that a fee could be limited on a fee,—that a freehold could commence *in futuro*, or that an estate could be made to cease by any matter *ex post facto*, so as to let in another limitation before the natural expiration of the former. Students have experienced great difficulties in properly defining and distinguishing the different kinds of uses, and hence great confusion has arisen. An endeavour will now be made (following out the classification of Sir E. Sugden), to analyse and distinguish them under these classes:—shifting or secondary uses; springing uses; future or contingent uses; and resulting uses.

1st. Shifting or secondary uses. The common law did not allow the fee to change from one to another, except upon breach of a condition annexed to the estate on its creation, and of which the feoffor or his heirs only could take advantage. To evade this strictness of the common law, the doctrine of shifting or secondary uses was called in aid. These peculiar uses take effect in derogation of some other estate, and are either limited expressly by the deed, or are authorised to be created by some person named in the deed, and they, though executed, may change from one to another, by circumstances *ex post facto*. Let me illustrate these three positions: 1st. They are either limited expressly by the deed, thus:—A limitation to A. and his heirs, with a proviso that if B. pay A. 50*l.*, the use to A. and his heirs shall cease, and the estate go to B.

and his heirs, vests the fee in A., subject to a shifting or secondary use in fee to B. 2nd. When they are authorised to be created by some person named in the deed, as if the proviso before mentioned be that C. may revoke the use to A. and his heirs, and limit it to B. and his heirs, although the effect would be the same when C. actually revokes and limits, yet the expression here is, that A. is seised in fee with a power of revocation and limitation of a new use to C. 3rd. Although executed, they may shift, and it is an every day practice, for in every marriage settlement, the first use is to the owner in fee till the marriage, and after the marriage is consummated then to other uses in this way: A. makes a feoffment to the use of his intended wife and her eldest son, for their lives. Here the owners, A., in the first instance, takes the fee, which upon the marriage ceases, the wife then takes the whole use in severalty, and upon the birth of a son the use is executed jointly in the mother and son, and this may be called either a secondary or a shifting use. It must be observed that a shifting use cannot be limited on a shifting use, and they must be confined within such limits as not to tend to a perpetuity, nor can a power be reserved to create such a future use as would work a perpetuity, if contained in the deed creating the power; nor can estates be created by the execution of a power as would have that tendency, which would not have been good, if contained in the instrument creating the power. A use, therefore, limited to A. in fee, could not be made to shift to B. on any event, beyond the period of a life or lives in being, and twenty-one years afterwards, with the further allowance of a few months for the gestation of a child *en ventre sa mere*. There is no doubt now that a shifting use may be created after an estate-tail, to take effect at any period, however remote, because such a limitation has no tendency to a perpetuity, inasmuch as the tenant in tail for the time being, may, by a disentailing deed under the 3 & 4 W. IV., c. 74, defeat the shifting use.

2. Springing uses. It is very difficult to distinguish these different classes of uses, for springing uses are intimately connected with future or contingent uses, however, the separate class of springing uses are those limited to arise on a future event where no preceding use is created, and which do not take effect in derogation of any other interest than that which results to the grantor, or remains in him till such springing uses arise, which must be within the period allowed by law, to avoid perpetuities. For instance, a bargain and sale made by A. to the use of B., ten years hence: here, in the meantime, the use to B. results to or remains in the grantor A. till the ten years expire, when the springing use to B. arises. When springing uses are raised by conveyances, not operating by transmutation of possession, as a bargain and sale, or covenant to stand seized, the

estate remains in the bargainor or covenantor, until the springing use arise, and as such conveyances have only an equitable effect until the statute and use meet, a springing use may be limited by them at once. A bargain and sale, then, to the use of A., after B.'s death without issue, if he so die within twenty years, would be good. It should be remarked, however, that this class of uses cannot be limited on a bargain and sale to a person not *in esse*, for this simple reason, that, under this conveyance, a person cannot take who does not, by himself or agent, pay a valuable though nominal consideration. But where the conveyance is one which does operate by transmutation of possession, as a feoffment, or lease and release (or now a release alone, the lease for a year having been declared unnecessary, two particulars should be attended to:—1st, to convey the estate according to the rules of the common law; and since the common law does not admit of a freehold being limited to commence *in futuro*, wherefore a feoffment to A. and his heirs, to commence six months after, or a release, although founded on a lease for a year, after the death of the releasor, would be absolutely void. 2d. To raise the use out of the seisin created by the conveyance; now, in accordance with this rule, a feoffment to A. and his heirs *in presenti*, is good, for out of A.'s seisin, a springing use can be well limited; a feoffment, therefore, to A. and his heirs, to the use of B. and his heirs, at the death of C., would be valid, and the use would result to the feoffor until the springing use took effect by C.'s death.

3. Future or contingent uses. These are properly uses that take effect as remainders, and in imitation of contingent remainders. Where an estate is limited previously to a future use, and the future use is limited by way of remainder, it is subject to the rules of the common law; which are, that a vested estate of freehold must precede, in order to support, the remainder, and that the remainder must vest either during the existence of such preceding estate, or *eo instanti* that it determines. And herein these contingent or springing uses (for they have been called by both epithets, and without any great inconsistency, although it creates difficulty in regard to their distinctive classification) differ from executory devises, which latter do not require any particular estate to support them; that by them a fee-simple or other less estate may be limited after a fee-simple, and that a remainder may be limited of a chattel interest, after a particular estate for life created in the same. The following is an example of a future or contingent use:—A use to the first unborn son of A., after a previous limitation to A. for life, or for years determinable on his life: for this does not answer to the notion of either a shifting or a springing use. This rule of law further restrains springing uses, viz.:—that if such a construction can be put upon a limitation

in use, as it may take effect by way of remainder, it shall never take effect as a springing use. To create, however, a good springing use, it must, as has been observed, be limited at once, independently of any preceding estate, and not by way of remainder, for if so, it is then a contingent and not a springing use, and then subject, as we have seen, to the laws governing contingent remainders. Thus springing uses are confined within very narrow limits, and future or contingent uses are placed on exactly the same footing with contingent remainders. Although shifting or secondary uses cannot properly be classed with future or contingent uses, because of the different modes by which they take effect, yet a shifting use, when created, may, in point of limitation, be like unto a contingent remainder, and shall, in that case, as well as a strict contingent use (which did not take effect in derogation of any other estate), be subject to the same laws.

4. Resulting uses. Whenever the use limited by the deed expires or cannot vest, it returns back to him who raised it, after such expiration, or during such impossibility, and is styled a resulting use. This kind of use has been incidently shown, whilst treating of the forgoing three classes of uses. For if a person make a feoffment to the use of his intended wife for life, with remainder to the use of her first born son in tail, till he marry, the use results back to himself; after marriage it is executed in the wife for life, and if she die without issue, the whole results back to him in fee. Where no consideration or declaration of the use appears in the conveyance, in such cases the use will result upon this principle, that that use which a man does not dispose of remains in him; for where a person makes a feoffment or other conveyance, and parts with or limits only a particular estate, leaving the residue undisposed of, it follows that where there is a feoffment to particular uses, the residue of the use shall result to the feoffor, and that, although the feoffment be made for a consideration, as the intent guides the use, and the feoffor in this case, expressly declaring a particular estate of the use, shows, that if he intended to dispose of the residue, he would have declared such intention also; "but, in this particular," remarks Fonblanque, "a distinction is observable where there is a consideration, though purely nominal, and no use is declared, and where some part of the use is declared; for, in the first case, no use will result to the feoffor, the payment of even a nominal consideration showing an intent that the feoffees should have the use; whereas, in the latter case, the consideration will be referred to the particular uses declared, and the residue of the use will result."

No one can take immediately under a grant (which is the regular method at common law of conveying incorporeal heredita-

ments) unless he is named as the grantee, the consequence deduced from which is, that a child unborn cannot take the first estate limited by the grant, because he is not capable of being the grantee. This, however, can be effected by a conveyance to uses, that may be made to one person to the use of another, and a child unborn may be the first *cestui que use*.

A man and his wife (*baron and femme*) are legally considered as one person; from this legal unity of their persons, it follows that a grant from a man direct to his wife is void, but by the interposition of a third person, thus, by a man to another person, to the use of his wife, it is good.

A person cannot make a grant of an estate of freehold to commence *in futuro*, for that, as we have seen, would be violating one of the great rules of the common law; he may, however, convey the land immediately to a use, which may then give an estate of freehold to commence *in futuro*.

A man cannot make a grant at the common law, reserving to himself a particular estate, as an estate for years, for life, or in tail; but a conveyance may be made to a person to uses, under which he may limit to his own use an estate for years, for life, or in tail, and if he declare uses, subject to his life, the uses will result to and remain in him during his life.

A person cannot grant an estate at common law, reserving to himself a power over that estate; all he can do is to annex a condition to defeat that estate, so as to restore himself to his former position; a conveyance, however, can be made to uses, under which uses, the former owner may reserve to himself a power of revocation, which, in some degree, partakes of the nature of a condition or a power of new appointment, under which latter power he may defeat either wholly or partially the uses limited in favour of other persons. On a conveyance at the common law, the estate can only be defeated by a condition being annexed on its original creation, but this did not answer the purposes of a settlement, because for a breach of the condition, only the grantor or his heir, and now, in some cases by statute, the assignee having the revocation, after a particular estate, can enter and take advantage of the condition, and such entry would defeat all the remainders dependent upon the estate to which the condition was annexed. But through the medium of a conveyance to uses, a power of revocation or new appointment may be given, either to the grantor or to a stranger, which, when exercised, will only defeat the estate previously limited: now a condition, *except* when annexed to a lease for years, must, as we have seen, wholly defeat the estate to which it is annexed, but a power may not only defeat the estate to which it is annexed, but it may also abridge or postpone the same, or it may introduce a particular estate in derogation of the former estate so as to defeat the same

partially, as is the case in powers of leasing, the most frequent of all kinds of powers; and also in powers of jointuring, &c.

No person taking an estate by grant, at the common law, can confer a title for a longer period than the continuance of his own estate; but, under a conveyance to uses, the owner of a particular estate may have a power, which will enable him to confer the right of enjoyment after the determination of his own estate, as in the common case of estates for life with powers of leasing, jointuring, &c. By the rules of the common law, several persons taking estates at different times, on account of their coming *in esse* at different periods, must necessarily take as tenants in common, who are seized *per my*, and not *per tout*, having only unity of possession, and not having unity of time, title, and interest, and without the benefit of survivorship. Under a conveyance to uses, however, several *cestuis que use*, taking at several times, because they come *in esse* at different periods, may take, as was adverted to before, as joint-tenants, the estate vesting in those who first come *in esse*, subject to open and divest when the others come *in esse*. A joint-tenancy has the unity of time, interest, title, and possession; the joint-tenants are seized *per my et per tout*, and, therefore, upon the death of one joint-tenant, his interest accrues to the others, which is called the *jus accrescendi*. By the rules of the common law, all estates must be limited by way of particular estate, with remainders dependent thereupon, and no estate could be limited with effect in derogation or abridgment of a prior estate; but under a conveyance to uses, one estate may be limited in derogation or abridgment of another estate, so as to defeat the same, as in the common case of springing, future, or contingent uses, examples of which were given when treating of the several classes of uses. Also under powers of leasing, jointuring, powers of revocation and new appointment, powers of sale and exchange, provisos for cesser of terms and powers of shifting the estate on refusal to change a name, and assume that of the estate upon acceding to its enjoyment, or an estate may be limited by way of interpolation, so as to divide two estates, which were before immediately one, limiting one estate till the happening of a certain event or the performance of a certain thing, and the other on an estate for life by way of jointure.

By the rules of the common law, one fee cannot be limited after or dependent upon another fee, or, more generally, no estate can be limited after and dependent upon a fee previously limited: but in a conveyance to uses, a fee may be limited to one person, and upon a given event, which must be within the period against perpetuities, the fee or a particular estate may be limited to another person, as in the ordinary case of settlements to the use of one and his heirs till marriage, and afterwards to other persons: and also,

the common case of a limitation to the use of several persons in fee with limitations over to take effect eventually either as between themselves or in favour of strangers.

It follows, therefore, that in all these and similar cases, it is necessary to resort to conveyances deriving their effect from the Statute of Uses to accomplish the intention of the parties, if it be determined to carry out such intention directly and immediately, without resorting to any circuitous mode of operation; for instance, since a feoffment was a gift from one to another, it followed that a man could not convey an estate to himself or to his heirs, unless he departed with the whole fee simple out of himself, or, to speak more intelligibly, it was necessary to every gift that there should be a feoffor and feoffee, and, therefore, if a man seized in fee were desirous to make himself tenant in tail, this object could only be effected at common law, by conveying the whole fee to a stranger, and accepting a feoffment from him in tail, which circuitry can be prevented by effecting the same object by a conveyance under the statute. *Sanders on Uses.*

USE AND OCCUPATION. By 11 Geo. II., c. 19, § 14, it is enacted, that it shall be lawful for the landlord, where the agreement is not by deed, to recover a reasonable satisfaction for the lands, tenements, or hereditaments held or occupied by the defendant in an action on the case, for the use or occupation of what was so held or enjoyed; and if in evidence on the trial of such action, any parol demise, or any agreement (not being by deed) whereon a certain rent was reserved, shall appear, the plaintiff in such action shall not therefore be nonsuited, but may make use thereof as an evidence of the *quantum* of the damages to be recovered. *Woodf. Land. and Tent.* 646.

USER DE ACTION, the pursuing or bringing an action in the proper county, &c.

USHER [*huis*, Fr., a door], a door-keeper, an officer who keeps a court quiet.

USUAL TERMS, a phrase in the common law practice, which means pleading usually, rejoining gratis, and taking short notice of trial. See **PERSONAL ACTION**.

USUCAPTION, the enjoying, by continuance of time, a long possession or prescription; property acquired by use or possession.

USUFRUCT, the right of life-rent possession, without destroying or wasting the subject over which the tenure extends. *Civil Law Word.*

USUFRUCTUARY, he that has the use and reaps the profit of a thing.

Usura dicitur quia datur pro usu æris. 2 Inst. 89.—(Usury is so called, because it is given for the use of money.)

Usura est commodum certum quod propter usum rei mutuatæ recipitur, sed, secundariò spirare de aliqua retributione, ad voluntatem ejus qui mutuatus est, hoc non est vitiosum. 5 Co. 70.—(Usury is a certain benefit which is received for the use of a thing lent; but, secondly to agree for a certain return, at

the option of the party who borrowed, this is not vicious.)

USURA MARITIMA [*fœnus nauticum*], interest taken on bottomry or respondentia bonds, which is proportioned to the risk, and is not affected by the usury laws. 19 Geo. II., c. 37.

USURPATION, the using that which is another's; an interruption or disturbing a man in his right and possession, &c. It is called *intrusion* in the civil and canon law.

USURY, money given for the use of money; the gain of anything by contract above the principal or that which was lent, exacted in consideration of loan thereof, whether it be of money or any other thing. 3 Inst. 151. The taking of interest above 5l. per cent. per annum on the loan of money, in cases where such rate of interest is not allowed by law.

By 2 & 3 Vict., c. 37, continued by subsequent acts, it is enacted, that after the passing of that act (*viz.*, after 29th July, 1839), no bill of exchange or promissory note, made payable at or within twelve months after the date thereof, or not having more than twelve months to run, nor any contract for the loan or forbearance of money above the sum of 10l. sterling, shall be affected by any statute in force for the prevention of usury; but subject to a proviso, that nothing therein contained shall extend to the loan or forbearance of any money upon security of any lands, tenements, or hereditaments, or any estate or interest therein; and also to a proviso, that nothing in the act contained shall be construed to enable any person to claim, in any court of law or equity, more than five per cent. interest on any account, or on any contract or engagement, notwithstanding they may be relieved from the penalties against usury, unless it shall appear to the court that any different rate of interest was agreed to between the parties; and also to a proviso, that nothing therein contained shall extend, or be construed to extend, to repeal or affect any statute relating to pawnbrokers, but that all laws concerning pawnbrokers shall remain in full force for all purposes whatsoever, as if this act had not been passed.

Usus est dominium fiduciarium. Bacon's Read. St. Uses.—(Use is a fiduciary dominion.)

Usus et status sive possessio potius differunt secundum rationem fori, quam secundum rationem rei. Idem.—(Use, estate, and possession, differ more in the rule of the forum than in the rule of the matter.)

UTAS [*octava*], the eighth day following any term or feast.

UTERINE BROTHER [*uterinus frater*], a brother born of the same mother, but by a different father.

Utile per inutile non vitiatur. Dyer, 292.—(The useful is not vitiated by the useless.)

Ullugatus est quasi extra legem positus: caput gerit lupinum. 7 Co. 14.—(An outlaw is, as it were, put out of the protection of the law: he carries the head of a wolf.)

Utlagatus pro contumacia et fuga, non propter hoc convictus est de facto principali. Fleta.
—(An outlaw, by contumacy and flight, is not on that account convicted of the principal fact.)

UTLAGHE [*utlagatus*], an outlaw.

UTLAWRY, outlawry: which see.

UTLESSE, an escape of a felon out of prison.

Ut pœna ad paucos, metus ad omnes perveniat.

4 Inst. 6.—(Though few are punished, the fear of punishment affects all.)

Ut summæ potestatis regis est posse quantum velit, sic magnitudinis est velle quantum possit.

3 Inst. 236.—(As the highest power of a king is to be able to do what he wishes, so the highest greatness of him is to wish what he is able to do.)

UTTER BARRISTERS [*juris consulti*], barristers who plead without the bar.

UTTERING, tendering, selling; putting in circulation; publishing.

Uxor furi desponsata non tenebitur ex facto viri, quia virum accusare non debet, nec delegere furtum suum, nec felonium, cum ipsa sui potestatem non habet, sed vir. 3 Inst.

108.—(A woman married to a thief, shall not be held by his actions, for she cannot accuse her husband, nor discover the robbery nor felony, since she has not any power of her own, but the husband.)

Uxor non est sui juris, sed sub potestate viri, cui in vitu contradicere non potest.—(A wife has no power of her own, but is under the government of her husband, whom in his lifetime she cannot contradict.)

V

VACANT POSSESSION. See EJECTMENT.

VACATION, intermission of juridical proceedings, or any other stated employments; recess of courts or senates. *Encyc. Lond.*

VACATURA, an avoidance of an ecclesiastical benefice.

VADIARE DUELLUM (to wage combat), where two contending parties, on a challenge, do give and take a mutual pledge of fighting. *Cowell.*

VADIUM [*vas, vadis*, Lat.], a pledge or surety.

VADIUM MORTUUM, a mortgage.

VADIUM PONERE, to take bail or pledges for a defendant's appearance.

VADIUM VIVUM, a vifgage or living pledge. See VIVUM VADIUM.

VAGABOND, a wanderer; an idle fellow.

VAGRANTS, sturdy beggars; vagabonds.

The act which is now in force, embodying and extending numerous former provisions, is 5 Geo. IV., c. 83. It points out three classes of persons:—

1st. Idle and disorderly persons; 2d, rogues and vagabonds; 3d, incorrigible rogues.

First. Idle and disorderly persons. The following are, under 5 Geo. IV., c. 83, § 3, to be deemed "idle and disorderly persons," within its true intent and meaning, so that

any justice of the peace may commit them (being convicted before him on his own view, or by the confession of the offender, or by the evidence of one or more credible witness or witnesses) to the house of correction, there to be kept to hard labour for any time not exceeding one calendar month, subject to an appeal to the sessions, viz.:

1. Every person being able wholly or in part to maintain himself or herself, or his or her family, by work, or by other means, and wilfully refusing or neglecting so to do, by which refusal or neglect he or she, or any of his or her family whom he or she may be legally bound to maintain, shall have become chargeable to any parish, township, or place.

2. Every person returning to and becoming chargeable in any parish, township, or place, whence he or she shall have been legally removed, by order of two justices of the peace, unless he or she shall produce a certificate of the churchwardens and overseers of the poor of some other parish, township, or place, thereby acknowledging him or her to be settled in such other parish, township, or place.

3. Every petty chapman or pedlar wandering abroad, and trading without being duly licensed, or otherwise authorized by law.

4. Every common prostitute wandering in the public streets or public highways, or in any place of public resort, and behaving in a riotous and indecent manner.

5. Every person wandering abroad, or placing himself or herself in any public place, street, highway, court, or passage, to beg or gather alms, or causing, or procuring, or encouraging any children so to do.

6. And by 5 Geo. IV., c. 83, § 16,

Every person asking alms under a certificate, or other instrument prohibited by the act.

The only certificates of magistrates still legal, are:—

Certificates granted by visiting justices, enabling persons discharged from gaols, &c., to receive alms or relief on their route to their place of settlement, under 5 Geo. IV., c. 83, § 15.

Certificates granted by a justice to a soldier, sailor, or marine, duly discharged, stating the place to which he wishes to go, being his home or legal settlement; or granted to the wife of a noncommissioned officer or soldier ordered on foreign service, and not permitted to embark with him, under 43 Geo. III., c. 61, §§ 1 & 2, saved by 5 Geo. IV., c. 83, §§ 15 & 16.

Admiralty or war-office certificates, or passes, granted as heretofore to discharged sailors, soldiers, or marines, or to the families of such persons serving abroad, or lately deceased, under 43 Geo. III., c. 61, § 4, saved by 5 Geo. IV., c. 83, § 15, have the same effect as the former.

In these three cases, the asking or having relief is legal; but loitering, &c., by a party discharged from prison, makes him a rogue and vagabond. 5 Geo. IV., c. 83, § 15.

7. Every person relieved in a workhouse, and refusing or neglecting while therein to perform the task of four hours work prescribed by the guardians of the parish or union, being suited to his age, strength, and capacity, or wilfully destroying or injuring his own clothes, or damaging any property of the guardians.

8. Every woman neglecting to maintain her bastard child, being able wholly or in part so to do, whereby it becomes chargeable to any parish or union.

9. Every poor person returning and becoming chargeable in the asylum of any district, after removal from any parish in such district, shall be deemed to have returned and become chargeable, without certificate to the parish whence he has been legally removed.

Secondly. Rogues and vagabonds. The following are by 5 Geo. IV., c. 83, § 4, to be deemed as "rogues and vagabonds," whom it is lawful for any justice of the peace to commit (being convicted before him by the confession of the offender, or by the evidence on oath of one or more credible witness or witnesses), to the house of correction, and there to be kept to hard labour for any time not exceeding three calendar months, subject, as in the case of idle and disorderly persons, to an appeal to the sessions, viz. :—

1. Every person committing any of the offences hereinbefore mentioned, after having been convicted as an idle and disorderly person.

2. Every person pretending or professing to tell fortunes, or using any subtle craft, means, or device by palmistry, or otherwise, to deceive and impose on any of her Majesty's subjects.

3. Every person wandering abroad, or lodging in any barn or outhouse, or in any deserted or unoccupied buildings, or in the open air, or under a tent, or in any cart or waggon, not having any visible means of subsistence, and not giving a good account of himself or herself.

4. Every person unlawfully exposing to view in any street, road, highway, or public place, any obscene print, picture, or other indecent exhibition; or wilfully exposing, or causing to be exposed to public view, in the window or other part of any shop or other building situate in any street, road, highway, or public place, any obscene print, picture, or other indecent exhibition.

5. Every person wilfully, openly, lewdly, and obscenely exposing his person in any street, road, or public highway, or in the view thereof, or in any place of public resort, with intent to insult any female.

6. Every person wandering abroad, and endeavouring by the exposure of wounds or deformities to obtain or gather alms.

7. Every person going about as gatherer or collector of alms, or endeavouring to procure charitable contributions of any nature or kind, under any false or fraudulent pretence.

8. Every person running away and leaving his wife, or his or her child or children, chargeable, or whereby she, or they, or any of them, shall become chargeable to any parish, township, or place.

9. Every person playing or betting in any street, road, highway, or other open or public place, at or with any table or instrument of gaming, at any game or pretended game of chance.

10. Every person having in his or her custody or possession, any pick-lock key, crow, jack-bit, or other implement, with intent feloniously to break into any dwelling-house, warehouse, coach-house, stable, or out-building, or being armed with any gun, pistol, hanger, cutlas, bludgeon, or other offensive weapon, or having upon him or her any instrument with intent to commit any felonious act.

11. Every person being found in or upon any dwelling-house, warehouse, coach-house, stable, or out-house, or in any inclosed yard, garden, or area, for any unlawful purpose.

12. Every suspected person, or reputed thief, frequenting any river, canal, or navigable stream, dock, or basin, or any quay, wharf, or warehouse, near or adjoining thereto, or any street, highway, or avenue leading thereto, or any place of public resort, or any avenue leading thereto, or any street, highway, or place adjacent, with intent to commit felony.

13. Every person apprehended as an idle and disorderly person, and violently resisting any constable or other peace officer, so apprehending him or her, and being subsequently convicted of the offence for which he or she shall have been so apprehended.

14. And by 5 Geo. IV., c. 83, § 15, persons discharged from prisons, to whom certificates or instruments have been delivered by the visiting justices, enabling them to have or receive alms or relief on the route to their places of settlement, but acting contrary to the directions of the certificate, or loitering on, or deviating from their route.

Thirdly. Incurrible rogues. The following persons are by 5 Geo. IV., c. 83, § 5, to be deemed "incurrible rogues" under the act :—

1. Every person breaking or escaping out of any place of legal confinement, before the expiration of the term for which he or she shall have been committed, or ordered to be confined by virtue of this act.

2. Every person committing any offence against this act, which shall subject him or her to be dealt with as a rogue and vagabond, such person having been at some former time adjudged so to be and duly convicted thereof.

3. And every person apprehended as a rogue and vagabond, and violently resisting any constable or other peace officer so apprehending him or her, and being subsequently convicted of the offence for which he or she shall have been so apprehended.

As to these it is enacted, "that it shall be lawful for any justice of the peace to commit such offender (being thereof convicted before him by the confession of such offender, or by the evidence on oath of one or more credible witnesses), to the house of correction, there to remain until the next general or quarter sessions of the peace; and every such offender, who shall be so committed to the house of correction, shall be there kept to hard labour during the period of his or her imprisonment." And further, it is enacted, "then when any incorrigible rogue shall have been committed to the house of correction, there to remain until the next general or quarter sessions, it shall be lawful for the justices of the peace there assembled to examine into the circumstances of the case, and to order, if they think fit, that such offender be imprisoned in the house of correction, and be there kept to hard labour for any time not exceeding one year from the time of making such order; and to order further, if they think fit, that such offender (not being a female), be punished by whipping, at such time during his imprisonment, and at such place within their jurisdiction, as, according to the nature of the offence, they in their discretion shall deem expedient."

VALEC, VALECT, or VADELET, a young gentleman; also, a servitor or gentleman of the chamber.

VALENTIA, the value or price of anything.

VALESHERIA, the proving by the kindred of the slain, one on the father's side, and another on that of the mother, that a man was a Welshman.

VALOR BENEFICIORUM, the value of every ecclesiastical benefice and preferment, according to which the first fruits and tenths are collected and paid. It is commonly called the *King's books*, by which the clergy are at present rated.

VALOR MARITAGII (the value of marriage). See **TENURE**.

VALUABLE CONSIDERATION. See **CONSIDERATION**.

VALUE RECEIVED, a phrase generally inserted in bills of exchange, but which is not necessary. *White v. Sedwick*, 4 Doug. 247.

VALVASORS or VIDAMES, an obsolete title of dignity next beneath a peer. 2 Inst. 667.

Vana est illa potentia quæ nunquam venit in actum. 2 Co. 51.—(Vain is that power which never comes into play.)

VANG [Sax.], to stand for one at the font. *Blount*.

Vani timores sunt æstimandi qui, non cadant in constantem virum. 7 Co. 27.—(Those fears are to be counted vain which affect not a valiant man.)

VANTARIUS, a precursor.

VARIANCE, difference, variation.

The courts are now very liberal in permitting variances in proceedings to be amended, especially where the other parties will suffer no prejudice.

VASSAL [*vassallo*, Ital., a dim. of *vassus*, low Latin. Wachter refers it to the Welsh *gwa*, a servant], one who holds of a superior lord; a subject; a dependant; a tenant or feudatory.

VASSALAGE, the state of a vassal; tenure at will; slavery.

VASSELERIA, the tenure or holding of a vassal.

VASTO, a writ against tenants for term of life or years; committing waste. *F. N. B.* 55.

VASTUM, a waste or common lying open to the cattle of all tenants who have a right of commoning.

VASTUM FORESTÆ VEL BOSCI, that part of a forest or wood wherein the trees and underwood were so destroyed, that it lay in a manner waste and barren. *Paroch. Antiq.* 351.

VAVASOR [a diminutive of *vassal*], a vassal of a vassal; one who held a fee of a vassal. *Encyc. Lond.*

VAVASORY, the lands that a vavasor held.

VAVASOUR, one who, himself holding of a superior lord, has others holding under him. *Camden*.

VEAL MONEY. The tenants of the manor of Bradford, in the county of Wilts, pay a yearly rent by this name to their lord, in lieu of veal paid formerly in kind. *Bract*.

VECTIGAL JUDICIARUM, fines paid to the Crown, to defray the expenses of maintaining courts of justice. 3 Salk. 33.

Vectigal, origine ipsa, jus Cæsarium et regium patrimoniale est. Dav. 12.—(Tribute in its origin is the patrimonial right of kings and emperors.)

VEJOURS [*visores*], persons sent by a court to take a view of any place in question, for the better decision of the right thereto; also, persons appointed to view an offence. *O. N. B.* 112.

VELTRAIA, the office of dog-leader or courier.

VELTRARIUS [*welter*, Germ.], one who leads greyhounds. *Blount*.

VENARIA, beasts caught in the woods by hunting.

VENATIO, hunting.

Vendens eundem rem duobus falsarius est. Jenk. Cent. 107.—(It is fraudulent to sell the same thing to two persons.)

VENDEE, one to whom anything is sold.

VENDER or VENDOR, a seller.

VENDIBLE, saleable, marketable.

VENDITION, sale, the act of selling.

VENDITIONI EXPONAS, a judicial writ addressed to the sheriff, commanding him to expose to sale goods which he has already taken into his hands, to satisfy a judgment creditor. *Reg. Judic.* 33. After delivery of this writ, the sheriff is bound to sell the goods, and have the money in court on the return day of the writ.

VENELLA, a narrow or straight way.

VENIA, a kneeling or low prostration on the ground by penitents.

Vaniæ facilitas incentivum est delinquenti. 3 Inst. 236.—(Facility of pardon is an incentive to crime.)

VENIAM ÆTATIS, a privilege granted by a prince or sovereign, whereby a party is entitled to act and have all the powers to act, *sui juris*, as if he were of full age. *Story's Const. of Laws*, 74.

VENIRE FACIAS, a judicial writ awarded to the sheriff to summon a jury for the trial of a cause.

VENIRE FACIAS TOT MATRONAS, a writ to summon a jury of matrons to execute the writ *de ventre inspiciendo*.

VENIRE FACIAS DE NOVO, a second writ to summon another jury for a new trial.

The *venire de novo* is the old common law mode of proceeding to a second trial, and differs materially from granting a new trial, inasmuch as it is awarded from some defect appearing upon the face of the record, while a new trial is granted for matter entirely extrinsic. Where a verdict can be amended, a *venire de novo* is never awarded. If it be awarded, the party succeeding at the second trial is not entitled to the costs of the first.

Chit. Arch. Prac. 1106.

VENTER, womb, mother.

VENTRE INSPICIENDO. See **DE VENTRE INSPICIENDO**.

VENUE [*vicinetum, visnetum*], a neighbouring place; the place whence a jury are to come for trial of causes.

At common law local actions must be brought in the county in which the cause of action arose; transitory actions, in any county, though if these last be brought in any county other than that in which the cause of action arose, the defendant can obtain an order to change the venue to the county where the cause of action really arose. The application should be made after declaration and before plea. The plaintiff may bring back the venue to the county in which he has already laid it, upon an undertaking to give material evidence in the county in which the venue was originally laid, and if he fail in doing so, he may be nonsuited, if the objection be taken at *Nisi Prius*. The venue may be changed by either party under special circumstances, as that a fair trial cannot be had in the county in which the venue is laid, from political excitement, &c. *Chit. Arch. Prac.* 956.

In criminal cases the general rule upon this subject is, that the venue in the margin of the indictment should be the county in which the offence was committed, or if the jurisdiction of the court in which the bill of indictment is to be preferred extend only to part of the county, or as is the case with the Central Criminal Court, includes more than one county, or be confined within the limits of a borough, the venue in the margin should be co-extensive with the jurisdiction of the court, that is, it should be descriptive of the limit to which the jurisdiction of the court is confined, and the offence must have been committed within the limit so described. To this general rule of law there are several statutory exceptions, *e. g.* :—

1. In indictments for extortion, the venue,

it is said, may be laid anywhere. 31 Eliz., c. 5, § 4.

2. For plundering or stealing any part of any ship in distress, or wrecked, or any goods belonging to such ship, the venue may be laid either in the county in which the offence was committed, or in the next adjoining county. 7 & 8 Geo. IV., c. 29, § 18.

3. For resisting or assaulting officers of the excise, for offences against the revenue of the customs, the venue may be laid anywhere. 7 & 8 Geo. IV., c. 53, § 43; 3 & 4 Wm. IV., c. 53, §§ 77, 122.

4. For offences relating to the post office, the venue may be laid in the county or place where the offence is committed, or where the offender is apprehended or is in custody. 7 Wm. IV. and 1 Vict., c. 36, § 37.

5. For endeavouring to seduce soldiers or sailors from their duty, or for inciting or stirring them up to mutiny, the venue may be laid anywhere. 37 Geo. III., c. 70, § 2; 57 Geo. III., c. 7.

6. For forgery and uttering forged instruments, the venue may be laid either in the county of the offence, or of the arrest or imprisonment. 1 Wm. IV., c. 66, § 24.

7. For offences against statutes relating to the stamp duties, the venue may be laid either in the county of the offence, or apprehension. 53 Geo. III., c. 108, § 24.

8. For offences relative to the coin, where two or more persons have acted in concert in different counties or jurisdictions, the venue may be laid in any of them. 2 Wm. IV., c. 34, § 15.

9. For bigamy, the venue may be laid either in the county where the offender was apprehended or is in custody, or in the county in which the second marriage took place. 9 Geo. IV., c. 31, § 22.

10. For escapes, breaches of prison and rescues, the venue may be either in the county of offence or apprehension. 4 Geo. IV., c. 64, § 44.

11. For returning from transportation, the venue may be laid either in the county, where the offender was apprehended, or in that whence he was ordered to be transported. 5 Geo. IV., c. 84, § 22.

12. For embezzlement by public servants, the venue may be either in county of offence or apprehension. 2 Wm. IV., c. 4, § 5.

13. For felonies, &c., committed in Wales, the venue must be laid in the county in which the offence was committed, unless otherwise directed by statute. 11 Geo. IV. and 1 Wm. IV., c. 70, § 14.

14. Where an offence is committed within the county of a city or town corporate, (except in London, Westminster, or Southwark, 38 Geo. III., c. 52, § 11, so much of that statute as applied to the cities of Bristol, Chester, and Exeter, having been repealed by 5 & 6 Wm. IV., c. 76, § 109), the indictment may be preferred to the jury of the next adjoining county, but the venue must still be laid in the county of the city, &c., where the offence was committed. 5 & 6 Vict., c. 38.

15. For treason or misprision of treason committed out of the realm, the venue may be laid in Middlesex, or where the Queen shall appoint, if there be a special commission to try the offence. 26 Hen. VIII., c. 13; 35 Hen. VIII., c. 2, § 1; 9 Geo. IV., c. 31, § 7.

16. All offences committed on the high seas, and other places within the Admiralty of England, the venue should be laid in the county where the trial is had. 7 & 8 Vict., c. 2, § 2.

17. In informations or indictments against a master of a ship for forcing on shore, or leaving behind any of the crew, the offence may be prosecuted wherever the offender may happen to be. 5 & 6 Wm. IV., c. 19, § 40.

18. In indictments for murder or manslaughter, or for being accessory before the fact to murder, or after the fact to murder or manslaughter, if the offence be committed upon the sea or out of England, and the party die in England, or *vice versa*, the venue may be laid in the county in which the death or offence happened. 9 Geo. IV., c. 31, § 8.

19. For offences committed on the boundary of two or more counties, or within the distance of five hundred yards of the boundary, or is begun in one and completed in another county, the venue may be laid in either county. 7 Geo. IV., c. 64, § 12.

20. If a larceny, simple or compound, be committed in one county, and the goods carried into another, an indictment for the simple or compound larceny may be brought in the county in which the offence was committed, or for a simple larceny, in the county into which, or in any of the counties through which the goods were carried. The larceny itself is ambulatory, but the aggravated circumstances are fixed and stationary. 7 & 8 Geo. IV., c. 29, § 76.

21. For felonies or misdemeanors committed upon any person, or on or in respect of any property, in or upon any coach, cart, or other carriage, employed on any journey, or on board any vessel employed in any voyage or journey upon any navigable river, canal, or inland navigation, the venue may be laid in any county through which the coach, &c., or vessel, shall have passed in the course of the journey or voyage during which the offence was committed; and where the side, bank, centre, or other part of the highway, river, &c., shall constitute the boundary of two counties, the venue may be laid in either. 7 Geo. IV., c. 64, § 13.

22. For conspiracy, the venue may be laid in any county, in which it can be proved that an act was done by any one of the conspirators, in furtherance of the common design. 7 Geo. IV., c. 64, § 12.

23. Accessories before the fact to felony, whether indicted with or after the principal felon, or for a substantive felony, may be tried by any court which shall have jurisdiction to try the principal felon, in the same manner as if such offence had been com-

mitted at the same place as the principal felony, although committed on the high seas or abroad; and if the offence of the accessory, and of the principal felon, be committed in different counties, the accessory may be indicted in either. 7 Geo. IV., c. 64, § 9.

24. An accessory after the fact to a felony may be tried in the same manner as if the act constituting the accessory were committed at the same place as the principal felony. 7 Geo. IV., c. 64, § 10.

25. Receivers of stolen property, whether indicted as accessories after the fact, or for a substantive felony, or for a misdemeanor only, may be indicted in the county or place in which they have or had the property in their possession, or in which the principal may by law be tried, in the same manner as they may be tried in the county in which the property was actually received. 7 & 8 Geo. IV., c. 29, § 56. *Arch. Crim. Plead.* 18. *Verba accipienda sunt cum effectu, — ut sortiantur effectum.* Bacon.—(Words are to be taken according to their consequence, that their consequence may appear.)

Verba æquivoca ac in dubio sensu posita intelliguntur digniori et potentiori sensu. 6 Co. 20.—(Words equivocal, and placed in a doubtful sense, are to be taken in their more worthy and effective sense.)

Verba aliquid operari debent, — debent intelligi ut aliquid operentur. 8 Co. 94.—(Words ought to operate some effect; they ought to be interpreted in such a way as to operate some effect.)

Verba chartarum fortius accipiuntur contra proferentem. Co. Lit. 36.—(The words of charters are to be received more strongly against him who produces them.)

Verba currentis monetæ, tempus solutionis designat. Dav. 20.—(The time of payment designates the words of current money.)

Verba dicta de persona intelligi debent de conditioni personæ. 2 Rol. Rep. 72.—(Words spoken of the person are to be understood of the condition of the person.)

Verba generalia generaliter sunt intelligenda. 3 Inst. 76.—(General words are to be generally understood.)

Verba generalia restringuntur ad habilitatem rei vel aptitudinem personæ. Bacon.—(General words must be narrowed to the nature of the subject or the aptitude of the person.)

Verba illata in esse videntur.—(Words referred to are considered to be incorporated.)

Verba intentioni, non è contra, debent inservire. 8 Co. 94.—(Words ought to be made subservient to the intent, not contrary to it.)

Verba ita sunt intelligenda, ut res magis valeat quam pereat. Bacon.—(Words are to be so understood as that the matter may be rather preserved than destroyed.)

Verba posteriora propter certitudinem addita, ad priora quæ certitudine indigent, sunt referenda. Wing.—(Subsequent words, added for the purpose of certainty, are to be referred to preceding words which need certainty.)

Verba relata hac maxime operantur per referentiam ut in eis in esse videntur. Co. Lit. 359.—(Words to which reference is made in an instrument have the same effect and operation as if they were inserted in the clause referring to them.)

Verba semper accipienda sunt in mitiori sensu. 4 Co. 17.—(Words are always to be taken in their milder sense.)

Verdictum, quasi dictum veritatis: ut iudicium quasi juris dictum. Co. Lit. 226.—(The verdict is, as it were, the dictum of truth: as the judgment is the dictum of law.)

VERDEROR, an officer in the royal forest, whose office is properly to look to the vert, and see it well maintained; and he is sworn to keep the assizes of the forest, and view, receive, and enrol the attachments, and presentment of trespasses of vert and venison, &c. *Munw.* 332.

VERDICT [*verbum dictum*, Lat.], the determination of a jury declared to a Judge.

The verdict is either general or special. A general verdict is given, *viva voce*, by the jury, thus, "we find for the plaintiff, damages —, costs —," or, if for the defendant, then, "we find for the defendant." If there be several counts in the declaration, the verdict may be distributed, finding some issues for the plaintiff, and others for the defendant. A verdict must comprehend the whole issues submitted to a jury in the particular cause, otherwise the judgment founded upon it may be reversed. A special verdict must state the facts proved at the trial, and not merely the evidence given to prove those facts, otherwise the verdict will be insufficient, and the court will award a *venire de novo*. *Chit. Arch. Prac.* 286.

Verdicts in criminal cases may be either general, as guilty or not guilty, or special, setting forth all the circumstances, and praying the judgment of the court, whether, upon the facts stated, there exists a crime. *Step. Com.* 431.

VERGE or **VIRGE**, the compass of the Queen's court, which bounds the jurisdiction of the Lord Steward of the household; it seems to have been twelve miles about. *Brit.* 68; a quantity of land from fifteen to thirty acres. 28 *Edw. I.* Also, a stick or rod, whereby one is admitted tenant to a copyhold estate. *O. N. B.* 17.

VERGERS [*portatores virgæ*, Lat., *bedeau d'église*, Fr.], those who carry white wands before the Judges.

VERIFICATION, confirmation by evidence.

All affirmative pleadings, which do not conclude to the country, must conclude with a verification or averment, which is of two kinds, common and special. The common verification is that which applies to ordinary cases, and is in the following form:—"And this the plaintiff (or defendant) is ready to verify." The special verifications are used only where the matter pleaded is intended to be tried by record, or by some other method than a jury. They are in the following forms:—"And this the plaintiff (or defendant) is

ready to verify by the said record;" or, "And this the plaintiff (or defendant) is ready to verify, when, where, and in such manner as the court here shall order, direct, or appoint." *Step. Plead.* 479.

Veritas, à quocunque dicitur, à Deo est. 4 Inst. 153.—(Truth, by whomsoever pronounced, is from God.)

Veritas demonstrationis tollit errorem nominis. 1 *Ld. Raym.* 303.—(The truth of the demonstration removes the error of the name.)

Veritas nihil veretur nisi abscondi. 9 Co. 20.—(Truth fears nothing but concealment.)

Veritas nimium altercando amittitur. *Hob.* 344.—(By too much altercation truth is lost.)

Veritas, quæ minime defensatur, opprimitur, et qui non improbat, approbat. 3 Inst. 27.—(Truth which is not sufficiently defended, is oppressed; and he who does not disapprove, approves.)

Veritatem qui non libere pronunciat, proditor est veritatis. 4 Inst. Epil.—(He who does not truly speak the truth, is a betrayer of truth.)

VERT [*verd*, Fr., *viridis*, Lat.], otherwise called *greenhue*, everything that bears a green leaf within a forest that may cover a deer; but especially great and thick coverts.

Manwood (part ii., p. 33) divides vert into overt-vert and nether-vert, the *overt-vert* is that which is termed *haut-boys*, and *nether-vert*, *sub-boys*; and into *special vert*, which is, all trees growing within the forest that bear fruit, to feed deer, because the destroying of it is more grievously punished than of any other vert.

Also, that power which a man has, by royal grant to cut green-wood in a forest.

VERY LORD AND VERY TENANT [*verus dominus et verus enens*], they that are immediate lord and tenant, one to another.

VEST, to place in possession; to make possessor of.

VESTA, the crop on the ground.

VESTED LEGACY. See **LEGACY**.

VESTED REMAINDER, an executed remainder, where the estate is invariably fixed to remain to a determinate person after the particular estate is spent; as if A. be tenant for twenty years, remainder to B. in fee, here B.'s is a vested remainder. 1 *Step. Com.* 300.

VESTRY or **VESTIARY**, a place or room adjoining to a church, where the vestments of the minister are kept; also, a parochial assembly, commonly convened in the vestry, to transact the parish business.

A custom has obtained in large and populous parishes of yearly choosing a select number of the chief and most respectable parishioners, to represent and manage the concerns of the parish for that year. They are called a *select vestry*.

VESTRY CLERK, an officer appointed to attend vestries, and take an account of their proceedings, &c.

VESTURA, a crop of grass or corn.

VESTURE, a garment; metaphorically applied to a possession or seisin.

VETITUM NAMIUM or **REPETITUM**

NAMIUM, a second or reciprocal distress, in lieu of the first, which was eloigned.

VETO, a prohibition, or the right of forbidding.

VIA SERVITUS (servitude of way), a right of road over another's ground, or rather a Scottish tenure, by which such right accrues against the possessor of land.

VIA REGIA, the highway or common road, called the Queen's way, because under her protection. It was sometimes called *via militaris*. *Bract. l. 4.*

Via trita est tutissima. 10 Co. 142.—(The ancient road is the safest.)

Vicarius non habet vicarium.—(A delegate cannot have a delegate.)

VICAR, one who performs the functions of another; a substitute. Also, the incumbent of an appropriated or impropriated benefice.

VICARAGE, the benefice of a vicar.

VICARAGE TITHES, small tithes.

VICARIAL TITHES, petty or small tithes payable to a vicar.

VICARIO, &c., an ancient writ for a spiritual person imprisoned, upon forfeiture of a recognizance, &c. *Reg. Orig. 147.*

VICE-ADMIRAL, an under-admiral at sea, or admiral on the coasts; a naval officer of the second rank.

VICE-ADMIRALTY COURTS, tribunals established in her Majesty's possessions beyond the seas, with jurisdiction over maritime causes, including those relating to prize.

By 2 & 3 Wm. IV., c. 57, it is enacted, that in all cases where a ship comes within the local limits of a court of vice-admiralty, suits may be commenced therein for seamen's wages, pilotage, bottomry, damage to ships by collision, breach of regulations of her Majesty's service at sea, salvage, and droits of admiralty, notwithstanding the cause of action may have arisen out of the local limits of such court.

VICE-CHAMBERLAIN, a great officer next under the Lord Chamberlain, who, in his absence, has the rule and control of all officers appertaining to that part of the royal household, which is called the chamber above stairs.

VICE-CHANCELLOR [*vice cancellarius*], a sub-chancellor.

VICE-CHANCELLORS IN EQUITY. There are three: the Vice-Chancellor of England, appointed by 53 Geo. III., c. 24, and two juniors, appointed by 5 Vict., c. 5, § 19. Each of these sits separately from the Lord Chancellor, to whom an appeal lies from their decisions.

VICE-CHANCELLOR OF THE UNIVERSITY. See **CHANCELLOR OF THE UNIVERSITIES**.

VICE-COMES, a viscount; a sheriff.

Vicecomes dicitur quod vicem comitis suppleat. Co. Lit. 168.—(Vicecomes (sheriff), is so called, because he supplies the place of the comes (earl).)

VICE-CONSTABLE OF ENGLAND, an ancient officer in the time of the fourth Edward.

VICE-CONSUL, a sheriff.

VICE-DOMINUS, a sheriff. *Ingulphus.*

VICE-DOMINUS EPISCOPI, the vicar-general or commissary of a bishop. *Blount.*

VICE-GERENT, a deputy or lieutenant.

VICE-MARSHAL, an officer who was appointed in assistance to the Earl Marshal.

VICE-ROY, the Sovereign's lord lieutenant over a kingdom, as Ireland.

VICE-TREASURER. See **UNDER TREASURER**.

VICINAGE [*voisinage*, Fr.], neighbourhood or near dwelling; places adjoining.

Vicini viciniore præsumuntur scire. 4 Inst. 173.—(Persons living in the neighbourhood are presumed to know the neighbourhood.)

VICIOUS INTROMISSION, a meddling with the movables of a deceased, without confirmation or probate of his will, or other probable title. *Scotch Term.*

VICIS ET VENELLIS MUNDANDIS, an ancient writ against the mayor or bailiff of a town, &c., for the clean keeping of their streets and lanes. *Reg. Orig. 267.*

VICOUNTIEL or **VICONTIEL**, anything that belongs to the sheriff, as *vicontiel writs* are such as are triable in the sheriff's court. As to vicontiel rents, see 3 & 4 Wm. IV., c. 99, §§ 12, 13, which places them under the management of the Commissioners of the Woods and Forests.

VICOUNTIEL JURISDICTION, that jurisdiction which belongs to the officers of a county, as sheriffs, coroners, &c.

VICTUALLING HOUSES. See **PUBLIC HOUSES**.

VIDAME, a vavisor: which see.

Videbis ea sæpe committi quæ sæpe vindicantur. 3 Inst. Epil.—(You will see those things frequently committed which are frequently vindicated.)

VIDELICET (to wit). See **SCILICET**.

VIDUITATIS PROFESSIO, the making a solemn profession to live a sole and chaste woman.

VIDUITY, widowhood.

VI ET ARMIS (with force and arms), words inserted in pleadings to express a forcible and violent act.

VIEW, an inspection of property in controversy, or of a place, where a crime has been committed, by the jury previously to the trial.

By 6 Geo. IV., c. 50, § 23, the *distringas* or *habeas corpora* may order that the sheriff shall have six or more of the persons returned to try the cause (who shall be consented to by the parties, or nominated by the sheriff in case the parties cannot agree), at the place in question, some convenient time before the trial, and that the place in question shall be then and there shown to them by two persons to be named in the writ, and appointed by the court. And the sheriff shall afterwards, by a special return upon the *distringas* or *habeas corpora*, certify that the view has been had, according to the command of the said writ, and shall specify the names of the viewers. By rule of the Queen's Bench (R. T., 7 Geo. IV.), it

is ordered, that "upon every application for a view, there shall be an affidavit stating the place at which the view is to be made, and the distance thereof from the office of the under-sheriff; that the sum to be deposited shall be 10*l.* in case of a common jury, and 16*l.* in case of a special jury, if such distance do not exceed five miles; and 15*l.* in case of a common jury, and 21*l.* in case of a special jury, if it be above five miles; and if such sum shall be more than sufficient to pay the expenses of the view, the surplus shall be forthwith returned to the attorney of the party who obtained the view; and if such sum shall not be sufficient to pay such expenses, the deficiency shall forthwith be paid by such attorney to the under-sheriff; and it is further ordered, that the under-sheriff shall pay, and shall account for the money so deposited, according to the scale set down in the rule."

By rule of all the courts of Hilary Term, 2 Wm. IV., r. 63, "the rule for a view may, in all cases, be drawn up by the officer of the court, on the application of the party, without affidavit or motion for that purpose." In ordinary cases the expenses are borne equally by all parties.

At the trial, the jurors who have taken the view are first called, and as many as appear form part of the jury.

VIEW OF FRANKPLEDGE. See **LEET**.

VIGIL, the eve or next day before any solemn feast.

Vigilantibus non dormientibus jura subveniunt.

Wing. 692.—(Laws come to the assistance of the vigilant, not to the sleepy.)

VI LAICA REMOVENDA, a writ that lies where two persons contend for a church, and one of them enters into it with a great number of laymen, and holds out the other *vi et armis*; then he that is holden out shall have this writ addressed to the sheriff, that he remove the lay force; but the sheriff ought not to remove the incumbent out of the church, whether he is there by right or wrong, but only the force. *F. N. B.* 54.

Villa est ex pluribus mansionibus vicinata et collata ex pluribus vicinis, et sub appellatione villarum continentur burgi et civitates. Co. Lit. 115.—(Villa is a neighbourhood of many mansions, a collection of many neighbours, and under the term of villas, boroughs and cities are contained.)

VILL or VILLAGE, a manor; a parish; the outpart of a parish.

The following is the difference between a mansion, a village, and a manor; namely, a mansion may be of one or more houses, but it must be of one dwelling house, and none near to it; for if other houses are contiguous, it is a village; and a manor may consist of several villages, or one alone. *Flota*, l. 6, c. 51.

VILLA REGIA, a manor held by the Crown.

VILLAIN or VILLEIN [*vilis*, Lat.], a man of base or servile condition; a bondman or servant; one who held by a base service.

VILLEIN IN GROSS, one annexed to the

person of the lord, and transferable by deed from one owner to another.

VILLEIN REGARDANT, one annexed to the manor or land.

VILLEIN SERVICES, base, but certain and determined services.

VILLEIN SOCAGE, a holding of the king; a privileged sort of villenage.

VILLENAGE, a base tenure.

There are two sorts:—1st, *pure*, where a man holds upon terms of doing whatsoever is commanded of him; and, 2d, *privileged*, otherwise called *villein socage*: which see. See also **TENURE**.

VILLANIS REGIS SUBTRACTIS REDUCENDIS, a writ that lay for the bringing back of the king's bondmen, that had been carried away by others out of his manors, whereto they belonged. *Reg. Orig.* 87.

VILLENIOUS JUDGMENT [*villanum judicium*], a judgment which deprived one of his *liberam legem*, whereby he was discredited and disabled as a juror or witness; forfeited his goods, and chattels, and lands for life; wasted the lands, razed the houses, rooted up the trees, and committed his body to prison. It has become obsolete. 4 *Bl. Com.* 136.

Vim vi repellere licet, modo fiat moderamine inculpatæ tutelæ, non ad sumendam vindictam, sed ad populsandam injuriam. Co. Lit. 162.

—(It is lawful to repel force by force, but let it be done with the moderation of blameless defence; not to take revenge, but to repel injury.)

VINAGIUM [*tributum à vino*], a payment of a certain quantity of wine, instead of rent, for a vineyard. 2 *Mon. Ang.* 980.

VINCULO MATRIMONII, *divorce à.* See **A VINCULO MATRIMONII**.

VIOLATION OF SAFE CONDUCTS, an offence against the law of nations. 4 *Step. Com.* 243.

VIOLATION OF WOMEN. See **RAPE**.

VIOLENT PRESUMPTION, circumstantial evidence, so powerful as to be un rebuttable.

Violenta præsumptio aliquando est plena probatio. Co. Lit. 6, b.—(Violent presumption is sometimes full proof.)

VIOLENT PROFITS, double value of a tenement within a burgh, and the highest rent for lands in the country, recoverable against a tenant for refusing to remove. *Scotch Term.*

Viperina est expositio quæ corrodit viscera textus. 11 Co. 34.—(It is a bad exposition which corrodes the bowels of the text.)

Vir et uxor censentur in lege una persona. Jenk. Cent. 27.—(Husband and wife are considered one person in law.)

Vir et uxor sunt quasi unica persona, quia caro et sanguis una: res licet sit propria uxoris, vir tamen ejus custos, cum sit caput mulieris. Co. Lit. 112.—(Man and wife are, as it were, one person, because only one flesh and blood: although the property may be the wife's, the husband is keeper of it, since he is the protector of the wife.)

VIRGA, a rod or ensign of office. *Cowell.*

VIRGATE, a yard-land.

VIRGE, *tenant by*, a species of copyholder, who holds by the virge or rod.

Vir militans Deo non implicetur secularibus negotiis. Co. Lit. 70.—(A man contending against God cannot be bound by secular ties.)

VIRIDARIO ELIGENDO, a writ for the choice of a verderer in the forest. *Reg. Orig.* 177.

VIRILIA, the privy members of a man, to cut off which was felony by the common law, though the party consented to it. *Bract.* l. 3, p. 144.

VIS [Lat.], any kind of force, violence, or disturbance to person or property.

VISCOUNT or **VICOUNT** [*vice-comes*], an arbitrary title of honor, without any shadow of office pertaining to it, created by Henry VI. 2 *Inst.* 5. A peer of the fourth order.

VISITATION, judicial visit or perambulation.

VISITATION BOOKS OF HERALDS, compilations, when progresses were solemnly and regularly made into every part of the kingdom, to inquire into the state of families, to register marriages and descents, which were verified to the heralds upon oath. They are allowed to be good evidence of pedigrees.

VISITOR, a government inspector of a corporation. The Court of Chancery exercises the right of visitation on behalf of the Crown.

VISITOR OF MANNERS, the regarder's office in the forest. *Manw.* 195.

Vis legibus est inimica. 3 *Inst.* 176.—(Force is inimical to the laws.)

VIS MAJOR, inevitable accident; irresistible force.

By inevitable accident, commonly called the act of God, is meant any accident produced by any physical cause, which is irresistible; such as a loss by lightning or storm, by the perils of the sea, by an inundation or earthquake, or by sudden death or illness.

By irresistible force is meant such an interposition of human agency as is, from its nature and powers, absolutely uncontrollable. *Story's Bailments*, 29.

VISNE [*visnetum*], a neighbourhood.

VISUS, view or inspection.

VITILITIGATE, to litigate cavillously.

Vitium clerici noscere non debet. Jenk. Cent. 23.—(An error of a clerk ought not to hurt.)

Vitium est quod fugi debet, ne si rationem non invenias, mox legem sine ratione esse clames. Ellesm. Postn. 86.—(It is an error which ought to be avoided, lest, if you cannot discover the reason, you should presently exclaim, that the law is without reason.)

VIVARY [*vivarium*], a park, warren, piscary, &c. 2 *Inst.* 100.

VIVA VOCE, by word of mouth.

VIVUM VADIUM, **VIFGAGE** or **LIVING PLEDGE**, when a person borrows money of another, and grants to him an estate to hold till the rents and profits shall repay the sum borrowed. The estate is conditioned to be void as soon as the sum is realised.

Vis ulla lex fieri potest quæ omnibus commoda

sit, sed si majori parti prospiciat utilis est. Plow. 369.—(Scarcely any law can be made which is applicable to all things; but it is useful if it regard the greater part.)

Violenti non fit injuria. Plow. 501.—(An injury is not done to the willing.)

VOCIFERATIO, an outcry; hue and cry.

VOIDANCE, the act of emptying; ejection from a benefice.

VOID AND VOIDABLE. There is this difference between these two words: *void* means that an instrument or transaction is so nugatory and ineffectual, that nothing can cure it; *voidable*, when an imperfection or defect can be cured by the act or confirmation of him who could take advantage of it. Thus, while acceptance of rent will make good a voidable lease, it will not affirm a void lease.

VOIR DIRE [*veritatem dicere*], examining a witness before he gives evidence in the cause, whether he be interested in the cause or not. Lord Kenyon said that objections to the competency of witnesses never come too late, but may be made in any stage of the cause. *Stone v. Blackburne*, 1 Esp. 37. Witnesses are not now incompetent on the ground of interest. 6 & 7 *Vict.*, c. 85.

VOITURE, carriage, transportation by carriage. *Voluntas donatoris in charta doni sui manifestè expressa observetur.* Co. Lit. 21.—(The will of the donor manifestly expressed in his deed of gift, is to be observed.)

Voluntas in delictis, non exitus spectatur. 2 *Inst.* 57.—(In crimes the will, and not the consequence, is looked to.)

Voluntas reputatur pro facto. 3 *Inst.* 69.—(The intention is to be taken for the deed.)

Voluntas testatoris est ambulatoria usque ad extremum vitæ exitum. 4 Co. 61.—(The will of a testator is ambulatory until death.)

Voluntas testatoris habet interpretationem latam et benignam. Jenk. Cent. 260.—(The intention of a testator has a broad and benignant interpretation.)

Voluntas ultima testatoris est perimplenda secundum veram intentionem suam. Co. Lit. 322.—(The last will of the testator is to be fulfilled according to his true intention.)

VOLUMUS (we will), the first word of a clause in the royal writs of protection and letters patent.

VOLUNTARIUS DÆMON, a drunkard.

VOLUNTARY, acting without compulsion; done by design. When applied to a conveyance, it means that it is made merely on a *good*, and not on a *valuable* consideration. See **FRAUDULENT CONVEYANCES**.

VOLUNTARY DEPOSIT, such as arises from the mere consent and agreement of the parties. *Story's Bailments*, 47.

VOLUNTARY JURISDICTION, one exercised in matters admitting of no opposition, and which may be exercised by any Judge at any time and place. *Scotch Phrase*.

VOLUNTARY REDEMPTION, the receipt of his money by the wadsetter (mortgagee), who then voluntarily renounces. *Ibid.*

VOTE, suffrage, voice given, and numbered.

VOTER, a constituent, one who has the right of giving his voice or suffrage.

VOTUM, a vow or promise. *Dies votorum*, the wedding day. *Fleta*, l. 4.

VOUCHE [*voco*, Lat.], to call out to warrant lands.

VOUCH, to give testimony, to obtest.

VOUCHEE, the person vouched in a writ of right.

VOUCHER, a witness, testimony, acquittance, or receipt.

VULGAR ERRORS, erroneous notions. The following are very glaring instances:—

1. That a funeral procession passing over private grounds creates a public right of way.

2. That it is lawful to arrest and detain a dead body.

3. That first cousins may intermarry, and that second consins may not: whereas they may both marry with each other.

4. That a butcher cannot be sworn as a jurymen on a coroner's inquisition.

5. That all persons born at sea, claim a right of settlement in Stepney parish.

6. That a lease for more than ninety-nine years constitutes a freehold.

7. That a husband is punishable for his wife's criminal acts.

8. That to disinherit a child, the sum of one shilling must be bequeathed.

Vulgaris opinio est duplex, viz., ortu inter graves et discretos, quæ multum veritatis habet, et opinio ortu inter leves et vulgares homines, absque specie veritatis. 4 Co. 107.—(Common opinion is double, viz., that which arises among grave and discreet men, which has much truth in it, and that opinion which arises among light and vulgar men, without any sort of truth.)

VULGARIS PURGATIO, *judicium Dei*: which see.

W

WADSET, a mortgage. *Scotch word*.

WADSET IMPROPER, when the mortgagor pays the public burdens, the wadsetter having his annual rents secured.

WADSET PROPER, when the wadsetter (mortgagee), takes his hazard of the rents of the land for satisfaction of his annual rent, and himself pays all public burdens.

WADSETTER, a mortgagee.

WAFORS, conductors of vessels at sea.

WAGE [*vadiare*, Lat., *gage*, Fr.], the giving of a security for the performance of any thing.

WAGER, *feigned issue on a*. See **FEIGNED ISSUE**.

WAGER OF BATTLE. See **BATTEL**.

WAGER OF LAW [*vadiatio legis*, Lat.], a proceeding which consisted in a defendant's discharging himself from the claim, on his own oath, bringing with him at the same time into court eleven of his neighbours to swear that they believed his denial to be true. It was abolished by 3 & 4 Wm. IV., c. 42, § 13.

WAGERING POLICIES, those effected for gambling purposes, which are void by 14 Geo. III., c. 48.

WAGERS. See **GAMING**.

It is well established at common law, that a wager is a legal contract, which the courts are bound to enforce, although it be in respect of a matter which is trifling, or in which the parties have no interest; but if it be on a subject which is illegal, or which offends against public policy, it is void. And wagers which tend to affect the feelings and interests of third parties, or lead to indecent exposures and examinations, or are, in any manner, *contra bonos mores*, are void. *Story's Contracts*, 127.

WAGES, the compensation agreed upon by a master to be paid to a servant, or any other person hired to do business for him.

WAGONAGE, money paid for carriage in a waggon.

WAIF or **WAIFT**, **WEIF** or **WEFT** [*waivium*, law Lat.], goods found but claimed by nobody; that of which every one waives the claim. Also, goods stolen and waived, or thrown away by the thief in his flight, for fear of being apprehended. These are given to the Sovereign by the law, as a punishment upon the owner for not himself pursuing the felon and taking away his goods from him. *Cro. Eliz.* 694.

WAINABLE, land that may be ploughed, manured, or tilled. *Chart. Antiq.*

WAINAGIUM, the countenance of a villein. 4 *Step. Com.* 442.

WALVE, to forsake; to put a woman out of the protection of the law.

WAIWER, the passing by of a thing, or a declining or refusal to accept it; also, declining to take advantage of irregularities in proceedings.

WAKEMAN [*quasi*, watchman], the chief magistrate of Ripon in Yorkshire. *Camden*.

WAKENING, a citation narrating that a complainant has raised a summons which he had let sleep for a year and a day, concluding that all persons cited on the first should compare, hear, and see the aforesaid action called, awakened, and debated, till sentence be given. *Scotch Word*.

WALES, a principality in the west of the island of Great Britain. After Edward I. conquered Wales, the line of their ancient princes was abolished, and the King of England's eldest son was created their titular prince, and the territory of Wales was then entirely annexed to the English Crown. The 27 Hen. VIII., c. 26, gave the utmost advancement to their civil prosperity, by admitting them to a thorough communion of laws with the subjects of England. By 20 Geo. II., c. 42, it is declared that where England only is mentioned in any act of Parliament, it shall be deemed to comprehend the dominion of Wales and town of Berwick-upon-Tweed. By 1 Wm. IV., c. 70, the jurisdiction of the court of quarter session was abolished, and assizes are now held there as in England. By 2 Wm. IV., c. 45, three of its counties

respectively send two members to the House of Commons, and each of the remaining counties one.

WALISCUS [*seruus*], a servant, or any other ministerial officer.

WALKERS, foresters, who have the care of a certain space of ground assigned to them.

WANLASS, an ancient customary tenure of lands, *i. e.*, to drive deer to a stand that the lord may have a shot. *Blount's Tenures*, 140.

WANTON AND FURIOUS DRIVING, an offence against public health.

By 1 Geo. IV., c. 4, it is provided that if any person shall be maimed, or otherwise injured, by reason of the wanton or furious driving, or racing, or by the wilful misconduct of any coachman, or other person, having the charge of any stage coach, or other public carriage, such wanton and furious driving or racing, or wilful misconduct of such coachman, shall be, and the same is thereby declared to be a misdemeanor, and punishable as such by fine or imprisonment, but subject to a proviso that the enactment shall not extend to hackney coaches drawn by two horses only, and not plying for hire as stage coaches. This act, however, must be taken as declaratory only of the common law, in the cases to which it refers, for at common law it is a misdemeanor, and may even amount to manslaughter or murder, for any person to drive or ride so wantonly and furiously as to endanger the passengers on the highway. 4 *Step. Com.* 304.

WAPENTAKE, a hundred, as, upon a meeting for that purpose, they touched each others weapons in token of their fidelity and allegiance. Others think that it was ten hundreds or boroughs. *Encyc. Lond.*; 1 *Ellis's Domesday*, 182.

WAR, a fighting between two kings, princes, or parties, in vindication of their just rights.

The sovereign has the sole prerogative of making war or peace.

WAR, *articles of*. See **ARTICLES OF WAR**.

WAR, *levying, against the Sovereign*, a species of treason. See **TREASON**.

WARD, the state of a child under guardianship. A *ward of court* is an infant under the protection of the Court of Chancery. See **INFANT**.

WARDA, the custody of a town or castle, which the inhabitants were bound to keep at their own charge. *Mon. Ang.*

WARDAGE, money paid and contributed to watch and ward. *Domesday*.

WARDEN, guardian or keeper.

WARD-HOLDING, the ancient military tenure in Scotland. Abolished by 20 Geo. II., c. 50.

WARDMOTE, a court held in every ward in London.

The wardmote inquest has power to inquire into and present all defaults concerning the watch and constables doing their duty, that engines, &c., are provided against fire, that persons selling ale and beer be honest and suffer no disorders, nor permit gaming, &c., that they sell in lawful measures;

searches are to be made for beggars, vagrants, and idle persons, &c., who shall be punished.

WARDPENNY, wardage: which see.

WARDWIT, the being quit of giving money for the keeping of wards.

WARDS AND LIVERIES, *court of*, a court erected by Henry VIII., and abolished by 12 Car. II., c. 24.

WARDSHIP, pupillage, guardianship; an incident to tenure in socage. See **TENURE**.

WARDSHIP IN CHIVALRY, an incident to the tenure of knight-service. See **TENURE**.

WARDSHIP IN COPYHOLDS, the lord is guardian of his infant tenure by special custom.

WARDSTAFF, a watchman's staff.

WARECTARE, to plough up land designed for wheat in the spring, in order to let it lie fallow for better improvement, which in Kent is called summer-land.

WAREHOUSING SYSTEM, the allowing of goods imported to be deposited in public warehouses, at a reasonable rent, without payment of the duties on importation if they are re-exported; or if they are ultimately withdrawn from home consumption, without payment of such duties until they are so removed. 43 Geo. III., c. 132; 3 & 4 Wm. IV., c. 57.

WARGUS, a banished rogue.

WARNCISTURA, garbure, furniture, provision, &c.

WARNOTH, an ancient custom, that if any tenant, holding of the castle of Dover, failed in paying his rent at the day, that he should forfeit double, and for his second failure treble: and the lands so held are called *terre culte et terre de warnoth*. *Mon. Angl.* ii. 589.

WARRANTICE, warranty. *Scotch Word*.

WARRANT, a precept, under hand and seal, to some officer to arrest an offender, to be dealt with according to due course of law; also, a writ conferring some right or authority.

Warrantizare est defendere et acquietare tenentem, qui warrantum vocavit, in seisinâ sua; et tenens de re warranti excambium habebit ad valentiam. Co. Lit. 365.—(To warrant is to defend and ensure in peace the tenant who calls for warranty in his seisin; and the tenant in warranty will have an exchange in proportion to its value.)

Warranty is abolished. 3 & 4 Wm. IV., cc. 27 and 74.

Warrantus potest excipere quod querens non tenet terram de qua petit warrantiam, et quod donum fuit insufficiens. Hob. 21.—(A warranter may except, that the complainant does not hold the land of which he seeks the warranty, and that the gift was insufficient.)

WARRANT OF ATTORNEY, a written authority to the attorney or attorneys to whom it is addressed, to appear for the party executing it, and receive a declaration for him in an action at the suit of a person therein mentioned, and thereupon to confess the same, or to suffer judgment to pass by default; it also authorizes the attorney to

execute a release of errors. It may be given whether an action be depending or not; but it must be given voluntarily, and for a good consideration, and by a party capable of appointing an attorney, or it will be voidable. It must be on a proper stamp.

By rule of M., 42 Geo. III., Queen's Bench, and Common Pleas; and R. M., 43 Geo. III., Exchequer, every attorney who shall prepare any warrant of attorney to confess a judgment, which is to be subject to any defeazance, shall cause such defeazance to be written on the same paper, or parchment, on which the warrant of attorney shall be written; or cause a memorandum in writing to be made in such warrant of attorney, containing the substance and effect of such defeazance. If this be omitted, it does not avoid the instrument, but renders the attorney answerable for the neglect of the court's order. The warrant of attorney is signed, sealed, and delivered; the defeazance only signed.

By 1 & 2 Vict., c. 110, § 9, after reciting that it is expedient that provision should be made for giving every person executing a warrant of attorney to confess judgment, or a *cognovit actionem*, due information of the nature and effect thereof, enacts, that from and after 1st October, 1838, no warrant of attorney to confess judgment in any personal action, or *cognovit actionem*, given by any person, shall be of any force, unless there shall be present some attorney of one of the superior courts on behalf of such person, expressly named by him and attending at his request, to inform him of the nature and effect of such warrant or *cognovit* before the same is executed, which attorney shall subscribe his name as a witness to the due execution thereof, and thereby declare himself to be attorney for the person executing the same, and state that he subscribes as such attorney. And the tenth section enacts, that a warrant of attorney, or *cognovit actionem*, not executed in manner aforesaid, shall not be rendered valid by proof that the person executing the same did, in fact, understand the nature and effect thereof, or was fully informed of the same.

A warrant of attorney to confess a judgment cannot be expressly revoked, but there are several cases of implied revocation. The death of either party is generally a revocation of the warrant, but the court may order judgment to be entered up after the death of the plaintiff if the warrant authorize it to be done by the plaintiff's representatives. If a *feme sole* give a warrant of attorney, and afterwards marry, the court will allow the judgment to be entered up against the husband and wife. If a warrant of attorney be given to a *feme sole*, and she afterwards marry, the judgment will be allowed to be entered up in the name of the husband and wife.

If the warrant of attorney be obtained by fraud or mis-representation, or upon an usurious, illegal, or immoral consideration,

the court will order it to be delivered up to be cancelled, and will set aside all proceedings had upon it, and so if an infant or *feme covert*, give it. The warrant may be good in part and bad in part, then the court will sustain it *quoad* the good part. If the fact of the consideration be doubtful, the court will direct an issue to try it.

By 3 Geo. IV., c. 39, §§ 1 and 2, the warrant of attorney, or a true copy thereof, and of the attestation thereof, and of the defeazance and indorsements thereon, and an affidavit of the time of the execution of such warrant of attorney must be filed with the masters within twenty-one days after its execution, to render such warrant of attorney, or any judgment or execution thereon, valid, as against the assignees of the defendant, if he should become bankrupt, unless judgment be signed, and execution issued within the twenty-one days. The 7 Geo. IV., c. 57, § 33, and 1 & 2 Vict., c. 110, § 60, extend these provisions in favour of the creditors of an insolvent debtor. The 1 Wm. IV., c. 38, § 3, declares that warrants of attorney executed by insolvents, before adjudication made in the matter of their petition, pursuant to the several acts passed for their relief, are not within the above acts. The 6 & 7 Vict., c. 66, prevents frauds upon creditors by secret warrants of attorney, and provides that in addition to the book directed to be kept by 3 Geo. IV., c. 39, and which might be inspected for sixpence, another book or index shall be kept, containing the names, additions, and descriptions of the respective defendants, or persons giving such warrants of attorney, or a *cognovit actionem*, but containing no further particulars thereof, which book may be inspected by any person on payment of one shilling, in addition to the aforesaid sixpence.

Judgment may be entered up on a warrant of attorney at the time therein specified for that purpose. But after a year and a day from its date, judgment cannot be entered up until leave, of the court in term time, or of a judge in vacation, is obtained for that purpose. If the warrant be under ten years old, leave is obtained by motion in term time, or by order of a judge in vacation; if ten years old or more upon a rule to show cause. The application must be supported by affidavit showing that the defendant is alive, and there must be also an affidavit of an attesting witness stating the execution of the warrant of attorney. The consideration, and the sum remaining due, are usually sworn to by the plaintiff himself in the affidavit used on this occasion; and if not sworn to by the plaintiff himself, there must be an affidavit stating why not. *Chit. Arch. Prac.* 682.

WARRANTIA CHARTÆ, a writ, where one was enfeoffed of lands with warranty, and then he was sued or impleaded in assize or other action, in which he could not vouch or call to warranty. *F. N. B.* 134. Abolished by 3 & 4 Wm. IV., c. 27.

WARRANTIA DIEI, an ancient writ, where

one having a day assigned personally to appear in court to any action, is in the mean time employed in the King's service, so that he cannot come on the day appointed; it was addressed to the justices to this end, that they neither take nor record him in default for that time. *F. N. B.* 17.

WARRANTY, a guaranty or security; also, a promise or covenant by deed by the bargainor for himself and his heirs, to warrant and secure the bargainee and his heirs against all men for the enjoying of the thing granted. *2 Bl. Com.*, c. 20.

Warranty of lands is altogether superseded in practice by 3 & 4 Wm. IV., cc. 27, 74.

The general rule of law, applicable to all sales of goods, is, that the buyer buys at his own risk; *caveat emptor*; unless the vendor give an express warranty, or unless the law imply a warranty from the nature of the thing sold, and the circumstances of the sale, or unless the vendor have been guilty of a fraudulent representation or concealment in regard to the things sold.

Express warranty. Every affirmation made by the vendor, at the time of the sale in relation to the goods, amounts to a warranty, provided it appear in evidence to be so intended. Where an express warranty is couched in technical terms, it is to be interpreted according to their technical signification, unless they be manifestly used in a different sense, and differently understood by the buyer. A general warranty does not extend to patent defects, which are apparent upon careless inspection, or to defects, which are, at the time, known to the buyer.

Implied warranty, a warranty is implied in five cases:—(1) a warranty of title will be presumed, when the goods sold are, at the time of the sale, in the possession of the vendor or of a third person, unless the contrary be then expressed; (2) when an examination of goods is from their nature or situation at the time of the sale impracticable, a warranty will be implied that they are merchantable; (3) upon an executory contract of sale, where goods are to be manufactured, or to be procured for a particular use or purpose, a warranty will be implied, that they are reasonably fit for such purpose or use, as far as goods of such a kind can be; (4) a warranty will be implied against all latent defects, in two cases: 1st, when the seller knew that the buyer did not rely on his own judgment, but on that of the seller, who knew at the time, or might have known, the existence of the defects; 2ndly, where from the situation of the parties (as in the case of a manufacturer or producer), the seller might have provided against the existence of defects; or, where a warranty may be presumed from the very nature of the transaction; (5) where goods are sold by sample, a warranty is implied that the bulk corresponds to the sample in nature and quality. *Story's Contracts*, 329.

WARRÉN [*waerande*, Dut., *guerrenne*, Fr.], a franchise or place privileged by prescription or grant from the Crown, for the

keeping of beasts or fowls of the warren. *1 Inst.* 233.

WARSCOT, a contribution usually made towards armour, in the time of the Saxons.

WARTH, a customary payment for castle guard.

WASH, a shallow part of a river or arm of the sea.

WASTE [*vastum*], a spoil made either in houses, woods, lands, &c., by a tenant for life or years to the prejudice of the heir, or of the reversioner or remainder man. Whatever does a lasting damage to the freehold or inheritance is waste.

It is either voluntary or actual, which is an act of commission, as pulling down a house; or it is permissive or negligent, which is a matter of omission only, as by suffering it to fall for want of necessary reparations.

The remedies for waste are special injunction in Chancery, or an action on the case at common law, or by proceeding for a forfeiture. *Woodf. Land. and Tent.*, 441.

WASTORS, thieves.

WATCH AND WARD, ward [*custodia*], is chiefly applied to the day time, in order to apprehend rioters and robbers on the highways. Watch [*uacht* or *uacta*], is applicable to the night only, and begins at the time when ward ends.

As to levying borough rate and watch rate, see 3 & 4 Wm. IV., c. 90; 6 & 7 Wm. IV., c. 104; 1 Vict., c. 78; 1 Vict., c. 81; 2 & 3 Vict., c. 28; 3 & 4 Vict., c. 23; and 3 & 4 Vict., c. 88.

WATCHMEN, constables, guardians of the peace by night.

They may arrest all offenders, and particularly night walkers, and commit them to custody till the morning.

WATER, a species of land (solecism though it be).

An action cannot be brought to recover possession of a pool or other piece of water by the name of water only, but it must be brought for the land that lies at the bottom, as twenty acres of land covered with water. *Brownl.* 142.

By granting a certain water, though the right of fishing passes, yet the soil does not. Water being a movable, wandering thing, there can only be a temporary, transient, usufructuary property therein.

WATER-BAILIFF, an officer in port towns, whose duty is to search ships.

WATERCOURSE, a species of incorporeal hereditament, being a right which one has to the benefit of the flow of a river or stream, such right commonly referring to a stream passing through one's own land, and the banks of which belong either to himself on both sides, or to himself on one side, and to his neighbour on the other, in which latter case (unless the stream be navigable, for then the bed of it, so far at least as the tide of the sea flows, presumably belongs to the Crown) the proprietor of each bank is considered as *primâ facie* the proprietor also of half the land covered by the stream, *i. e.*, *usque filum aquæ*.

A prescriptive *prima facie* right to water-courses and ways, is gained by twenty years uninterrupted enjoyment, and an indefeasible right after forty years; and when the land over which such rights as these are claimed has been held for term of life, or a term exceeding three years, such term shall be excluded from the computation of the forty years, in the event of the person who may be entitled in reversion resisting the claim within three years after the term determines. 2 & 3 Wm. IV., c. 71.

WATER-GAGE, a sea wall or bank, to restrain the current and overflowing of the water; also, an instrument to measure water.

WATER-GANG, a trench or course to carry a stream of water.

WATER-GAVIL, a rent paid for fishing in, or other benefit received from, some river.

WATER-MEASURE, a greater measure than the Winchester, formerly used for selling coals in the pool, &c. 22 Car. II., c. 11.

WATERMEN. See **THAMES WATERMEN**.

WATER ORDEAL. See **COLD WATER ORDEAL** AND **HOT WATER ORDEAL**.

WATERSCAPE, an aqueduct or passage for water.

WAVESON, goods swimming upon the waves after a shipwreck.

WAXSCOT [*ceragium*], duty anciently paid twice a year towards the charge of wax candles in churches. *Spelm.*

WAY [*wæg*, Sax., *weigh*, Dut., *wig* or *wig*, M. Goth.], road made for passengers.

There are three kinds of ways:—1st, a footway (*iter*); 2d, a park and prime way, which is both a horse and footway (*actus*); 3d, a cart way (*via* or *aditus*), which is called *via regia*, if it be common to all men; and *communis strata*, if it belong only to some town or private person. *Co. Lit.* 56 a.

All ways are divided into highways and private ways. A right of way strictly means a private way, i. e., a privilege which an individual or a particular description of persons may have of going over another's ground. Such a right is an incorporeal hereditament.

A highway is a public passage for the Sovereign and all her subjects, and it is commonly called the Queen's public highway. Besides the ordinary highways, turnpike roads have been created, and regulated by specific acts of Parliament. Highways generally become so by what is called a dedication of them to the public by the owner of the soil, but the public may also acquire the use of a highway by act of Parliament.

As highways are for public service, if they are so out of repair that the usual track is impassable, it is allowed for the general good, that people should be entitled to pass, by going out of the track, even upon the land of the owners of the adjoining closes; but this privilege is exclusively confined to highways; for as private ways are all presumed to have originated in grants from the owner of the soil, the want of repair, amounting to what is called in law a foundrous

state, does not authorize passengers to go out of the way upon the adjacent land.

The inhabitants of a parish are *prima facie* bound to repair a highway of common right; unless by prescription they can throw the burden on particular persons by reason of their tenure; and if the inhabitants of a township, bound by prescription to repair, be expressly exempted by an act of Parliament from repairing the roads to be made within the township, it falls on the rest of the parish.

By the General Highway Act, 5 & 6 Wm. IV., c. 50, power is given of stopping up and diverting highways, and the mode of proceeding to effect this object is pointed out. Parties grieved have a right of appeal to the sessions.

Bridges are public highways. See **BRIDGE**.

A navigable river is esteemed to be a highway; and if the water, which is the highway, change its course and flow upon the land of another, the highway extends over the place where the water newly flows, in like manner as it existed over the ancient course, so that the owner of the soil may not disturb it. With respect to navigable rivers there is this difference, however, between them and highways, that the right to the soil of a navigable river is not, by presumption of law, in the owners of the adjoining lands.

Ferries may be said to be common highways, as they are a common passage over rivers. They differ, however, in some measure, as they are the private property of individuals, who may maintain an action for the disturbance of their rights.

A private right of way may be claimed by prescription and immemorial usage: thus, where the inhabitants of a particular hamlet, or the owners or occupiers of a particular close or farm, have immemorially been used to cross a particular piece of land, a right of way is created by the immemorial usage, which supposes a grant. By 2 & 3 Wm. IV., c. 71, § 2, it is enacted, that no claim by custom, prescription, or grant to any way or other easement, or to any watercourse, or the use of any water which has been enjoyed twenty years without interruption, shall be defeated by showing the commencement of the right within the time of legal memory; and where the right shall have existed forty years, it shall be absolute and indefeasible, unless it appear to have been enjoyed by licence by deed or writing. The right must be proved by user down to the time of the commencement of the action; and therefore, if there be no proof of user for the last four or five years, it is insufficient. Unity of possession operates as an extinguishment of a right of way by prescription.

A private right of way may also be grounded on a special permission; as when the owner of lands grants to another a liberty of passing over his grounds, to go to church, market, or the like, in which case the gift or grant is particular, and confined to the grantee alone: it dies with the person; the

grantee cannot assign it, or justify taking another person in his company.

A right of way may also arise by act and operation of law; for if a man grant a piece of ground in the middle of his field, he at the same time tacitly and impliedly gives a way to come at it, and the grantee may cross the grantor's land without being a trespasser. A way of necessity is limited by the necessity which created it; and when such necessity ceases, the right of way also ceases.

Disturbance of ways happens when a person, who has a right of way over another's ground, by grant or prescription, is obstructed by inclosures or other obstacles, or by ploughing across it, by which means he cannot enjoy the right of way, or at least not in so commodious a manner as he might have done. The remedy is usually by action on the case for damages. A right of way is often contested in an action of trespass. The remedy for the want of repair or obstruction to public highways, is by indictment. *Woodf. Land. and Tent.* 530.

WAYS AND MEANS, committee of, a committee of the House of Commons, to consider the ways and means of raising the supply which has been voted to the Crown.

WEALD, WALD, WALT [Sax.], a wood or grove.

WEALREAF, the robbing of a dead man in his grave.

WEAR, a great dam made across a river, accommodated for the taking of fish, or to convey a stream to a mill.

WED [Sax.], a covenant or agreement. *Cowell.*

WEDBEDRIP, the customary service which inferior tenants paid to their lords in cutting down their corn, or doing other harvest duties.

WEIGHTS AND MEASURES, instruments for reducing the quantity and price of merchandise to a certainty, that there may be the less room for deceit and imposition. See **AVOIRDUPOIS** and **TROY WEIGHT**.

The adjustment of weights and measures is a prerogative of the Crown.

WEIGHTS OF AUNCCEL. See **AUNCCEL WEIGHT**.

WEND, a certain quantity or circuit of ground.

WERELADA, a purging from a crime by the oaths of several persons, according to the degree and quality of the accused.

WERGILD, WEREGILD, the price of homicide or other enormous offences, paid partly to the Crown for the loss of a subject, partly to the lord whose vassal he was, and partly to the party injured or the next of kin of the party slain. 4 *Bl. Com.* 188.

WEST-SAXON-LAGE, the law of the West Saxons.

WHARF, a broad plain place, near some creek or haven, to lay goods and wares on, that are brought to or from the water.

There are two kinds:—1st, *legal*, which are certain wharfs in all seaports, appointed by commission from the Court of Exchequer, or legalised by act of Parliament; 2d, *sufferance*, which are places where certain

goods may be landed and shipped, by special sufferance, granted by the Crown for that purpose.

WHARFAGE, money paid for landing goods at a wharf, or for shipping and taking goods into a boat or barge thence.

WHARFINGER, he that owns or keeps a wharf.

WHEELAGE, duty or toll paid for carts, &c., passing over certain ground.

WHIPPING, a punishment inflicted for many of the smaller offences.

The punishment of whipping was inflicted, at common law on persons of inferior condition, guilty of petty larceny and other smaller offences. But it seems that, in the earliest periods, by the usage of the Star Chamber, it was never to be inflicted on a gentleman.

By 1 Geo. IV., c. 57, judgment shall in no case be given, that any female, convicted of any offence, shall be whipped either publicly or privately.

WHITEHART-SILVER, a mulct on certain lands in or near to the forest of Whitehart, paid only into the Exchequer, imposed by Henry III. upon Thomas de la Linda, for killing a beautiful white hart, which that king before had spared in hunting. *Cambd. Brit.* 150.

WHITE FRIARS, a place in London which was formerly privileged from arrest.

WHITE MEATS, milk, butter, cheese, eggs, and any composition of them.

WHITE RENTS, payments reserved in silver or white money.

WHITE SPURS, a kind of esquires.

WHITSUNTIDE, the feast of Pentecost, being the fiftieth day after Easter.

It is so called, because those who were newly baptized came to the church, between Easter and Pentecost, in white garments. *Blount.*

WHITSUN FARTHINGS, pentecostals: which see.

WIC, a place on the sea shore on the bank of a river.

WICA, a country house or farm.

WICHENCRIF, witchcraft.

WIDOW [*widwa*, Sax., *wedure*, Dut., *weddr*, Wel., *vidua*, Lat.], a woman whose husband is dead.

WIDOWER, one who has lost his wife.

WIDOW-HUNTER one who courts widows for a jointure.

WIDOW'S CHAMBER. In London, the widow of a freeman is, by the custom of the city, entitled to her apparel and the furniture of her bed-chamber.

WIDOW'S TERCE, the right which a wife has, after her husband's death, to a third of all the rents he died infeft of during life. *Scotch Phrase.*

WIFE [*wif*, Sax., *wiff*, Dut., *wyf*, Scel., *wor*, Lat.], a woman that has a husband. See **HUSBAND AND WIFE**.

WIGREVE, the overseer of a wood.

WILL. By the first section of 7 Wm. IV. and 1 Vict., c. 26, the word "will" shall extend to a testament, to a codicil, and to an appointment by will or by writing in the na-

ture of a will, in exercise of a power; also to a disposition by will and testament, or devise of the custody and tuition of any child, by virtue of the 12 Car. II., c. 24, for taking away the court of wards and liveries, and tenures *in capite*, and by knight's service and purveyance, and for settling a revenue upon the king in lieu thereof; or under 14 & 15 Car. II., for taking the same away in Ireland, and to any other testamentary disposition. The words "real estate" and "personal estate" have the same extensive signification, *i. e.*, with reference to the provisions of the act.

The second section repeals the following acts relating to wills: 32 Hen. VIII., c. 1; 34 & 35 Hen. VIII., c. 5; 10 Car. I., sess. 2, c. 2, §§ 5, 6, 12, 19, 20, 21, and 22 of the 29 Car. II., c. 3, commonly called the Statute of Frauds, and of the 7 Wm. III., c. 12, the Irish Statute of Frauds, § 14 of 4 & 5 Anne, c. 16, and of 6 Anne, c. 10; § 9 of 14 Geo. II., c. 20; 25 Geo. II., c. 6, excepting as to the colonies, to which this act does not extend. 25 Geo. II., c. 11, and 55 Geo. III., c. 192. These acts are repealed, *except* so far as they relate to any wills or estates *pur autre vie*, to which this act does not extend. It is proper, perhaps, to mention here, those statutes, which, not having been repealed by this section, remain in force.

The 12 Car. II., c. 24, §§ 8, 9, 10, relative to the appointment of testamentary guardians by parents. The Statute of Charitable Uses and Fraudulent Devises, and the Registry Acts, relating to those matters that are not within the scope of this act, and the 11 Geo. IV. and 1 Wm. IV., c. 20, relative to the execution and attestation of wills and letters of attorney of seamen, marines, and petty officers of the navy, and non-commissioned officers of marines.

The third section, termed the enabling clause, enacts the subjects of devise. A person, then, can devise, bequeath, or dispose of all his real and personal estate, both legal and equitable, and all his customary freeholds and copyholds, without surrender and without admittance, and also such of them as could not, but for this act, have been disposed of; also all estates *pur autre vie*, all contingent interests, and all rights of entry and property acquired even *subsequently* to the execution of this will.

The fourth section provides for the payment of the stamp duties, fines and fees, which would have been paid or payable in respect of the surrender, where there was a custom to surrender to the use of the will, had this act and the 55 Geo. III., c. 192, never passed. It is then a re-enactment of the twenty-second section of the act last mentioned, with this further provision, since the present act authorizes a devise before admission, that, the devisee shall not be admitted, until he has paid the dues which his testator would have been liable to pay on admittance, as well as the dues on his own admittance.

The fifth section enacts, that when any

real estate of the nature of customary freehold or tenant right, or customary or copyhold, shall be disposed of by will, so much of the will as shall contain such disposition shall be entered on the court rolls of such manor or reputed manor; but as to the declaration in trusts contained in such wills a statement only that such real estate is subject to the trusts declared by such will; and the lord shall be entitled to the same fine, heriot, dues, duties and services from the devisee as would have been due from the customary heir, in case of the descent of the same real estate, and the lord shall have the same remedy for enforcing such as he would have against the customary heir in case of a descent.

The sixth section enacts, that if no disposition by will be made of any estate *pur autre vie* of a freehold nature, the same shall be chargeable in the hands of the heir, if it come to him by reason of special occupancy, as assets by descent, as in the case of freehold land in fee-simple; and in the case of there being no special occupant of any estate *pur autre vie*, whether freehold, or customary freehold, tenant right, customary or copyhold, or of any other tenure, and whether a corporeal or incorporeal hereditament, it shall go to the executor or administrator, and if it come to him either by reason of a special occupancy, or by virtue of this act, it shall be assets in his hands, and shall be applied and distributed in the same manner as the personal estate of the testator or intestate. Now special occupancy is simply this:—where an estate *pur autre vie* has been granted to a man and his heirs during the life of *cestui que vie*, and the heir holds possession during the remainder of the estate granted, and is called a *special occupant*.

These sections enact what property is disposable by will: but inasmuch as the old law is still applicable, where the will was made before the 1st January, 1838, and not since republished or revised by any codicil executed as required by this act, it becomes necessary to enquire wherein does the new law differ from the old, and in order to point out the difference as briefly as the subject will admit of, we will trace it, by way of summary, enlarging upon those matters which require further elucidation.

Personal chattels, then, of every kind, and leaseholds for years, could always have been disposable by will. The same may be said of freeholds, customary freeholds, and copyholds, *except* under the old law, the legal estate in those customary freeholds, where there was not any custom to devise directly, which is not excepted under the new. The difference between customary freeholds and copyholds is, that the first are said to be held *at the will of the lord*, according to the custom of the manor; the last, according to the custom of the manor only. As to customary estates and copyholds without surrender to the use of the will, or admittance

of the *devisor* under the new law; but under the old, only where the estate was equitable or came by descent was the admittance of the *devisor* dispensed with. The rights of the lord are preserved by the fourth section, while the fifth provides for the registration of wills respecting copyholds: under the old law a mere recital on the admittance was all that was done. As to the lord's remedies for his fines, they are these:—the fourth section authorizes the lord to refuse admittance to the devisee until he has paid the dues which his ancestor would have incurred on his admittance; but as to the fine due on the admission of the devisee himself, the lord has still no remedy until after the admittance. If he delay to be admitted, the lord may seize the land, and hold it until he has paid himself the amount of the fine out of the profits, or even to seize it as a forfeiture, if the custom warrant it; after admittance the fine is recoverable by action of debt on *assumpsit*. Not more than two years improved value of the estate can be claimed; if more is paid on compulsion, it can be recovered by *assumpsit*. Rights of action and entry, which could not have been devised under the old law. Contingent estates and possibilities of every kind; but, under the old law, with the exception of estates contingent as to the *person* (not the *estate* but the *person*, mark!) a joint-tenant's chance of survivorship, and an expectant heir's chance of inheritance. Estates, *pour autre vie*, of every kind, except estates *quasi* in tail; but under the old law, with the exception of estates *pour autre vie* in copyholds, not specially limited, unless by special custom. By the new law all devisable property acquired after the date of the will, excepting under the old law, estates of freehold, in lands of freehold, customary, or copyhold tenure. Estates tail, or estates *quasi* in tail, cannot be devised at all. A *quasi* estate tail is that which is limited to a person, and the heirs of his body, so long as another person or persons named shall live. There then are the differences that have taken place under the new law: we will now enquire who may make wills.

The seventh section enacts, that no will made by any person under the age of twenty-one years shall be valid. Infants under the old law could execute powers simply collateral, *i. e.*, not coupled with an interest, appoint guardians of their children, and bequeath personal property by the common law; males at the age of fourteen and females at twelve; and their wills remained in force after their majority, unless revoked.

By section eight, no will made by any married woman shall be valid, *except* such a will as might have been made by a married woman before the passing of this act. Now a married woman may make a will of her savings out of her separate estate, and generally, by ante-nuptial contract, or under a power, without the assent of her husband; and as to her *choses in action* within the

power of the husband, and by special custom as to copyholds, with the assent of the husband, but the will will not operate if she survive her husband, and his assent may be revoked. A wife, who is an executrix, may make a will for the mere purpose of devolving her representative character on another, because her own interest cannot be affected. This act will probably not be held to dispense with the surrender to the use of the will of a married woman, as to lands which she may devise by special custom, on the ground that a surrender implied an examination of the married woman by the steward, touching her free will and intention. If the husband have abjured the realm, or been banished, the wife's disability ceases both as to real and personal estate. The disabilities existing at common law as to making wills, include idiots, persons born blind, and deaf and dumb, lunatics (except during lucid intervals), persons imbecile from disease, old age, or drunkenness, and those mentally disqualified, at the time, from any other circumstance, as delusion, fraud, or fear. Neither traitors nor felons, excepting as to trust property, nor outlaws nor suicides, as to personal property, and aliens, as to personal property, and as to land until office found, are capable of making wills.

As to the manner of making wills, the ninth section enacts, that no will shall be valid, unless made in writing, and executed thus:—signed at the foot or end thereof by the testator, or by some other person in his presence, and by his direction; and such signature shall be made or acknowledged by the testator, in the presence of two or more witnesses present at the same time, who shall attest and subscribe the will in the presence of the testator, but no form of attestation shall be necessary.

Section ten enacts, that appointments by will, in exercise of any power, to be executed in like manner, and to be valid, although other required solemnities are not observed. The eleventh section contains a proviso, saving the execution of wills of soldiers and seamen in actual service as to personal estate; and the twelfth section further enacts, that this act is not to affect certain provisions of 11 Geo. IV. and 1 Wm. IV., c. 20, as to the wills of petty officers, seamen, and marines, relating to their wages, pay, prize-money, bounty-money, and allowances payable in respect of services in her Majesty's navy.

The thirteenth section enacts, that every will executed in manner hereinbefore required shall be valid, without any other publication thereof. The fourteenth section enacts, that no will shall be void on account of the incompetency of an attesting witness, either at the time of its execution, or at any time afterwards. The fifteenth section enacts, that any person attesting the execution of a will, to whom or to whose wife or husband any beneficial devise, legacy, estate, interest, gift, or appointment, of or

affecting any real or personal estate (other than and except charges and directions for the payment of any debt or debts) shall be thereby given or made, it shall be utterly null and void; and such person shall be admitted as a witness, to prove the execution of such will, or to prove the validity or invalidity thereof. The sixteenth and seventeenth sections enact, that creditors and executors may attest and be admitted witnesses.

Let us take a summary as to the formalities necessary to a will, according to the old and new laws.

Writing is necessary, except as to wills of personal estate by soldiers and seamen, but their wills of real estate must follow the provisions of this act; the exceptions under the old law, were also wills of personal estate, not exceeding 30*l.*, and parol wills of personalty of any amount within the Statute of Frauds. *Signature* by the testator, or by another in his presence and by his direction—at the end. It is perhaps safe though certainly not necessary, that where the will consists of several sheets, each sheet should be separately signed, only the *last*, would be the signature under the act; and it must be made or acknowledged in the joint-presence of two witnesses, *except* under the old law; wills of personal estate and copyholds, and as to appointments of testamentary guardians, *in the presence* of two witnesses. The attestation must be by two witnesses, who attests and subscribes the will in testator's presence; the exceptions under the old laws were:—as to freehold estates, (including estates *pour autre vie*) by three *credible* witnesses, in the presence of the testator: as to a devise *at law* of stock in the funds, by two *credible* witnesses, and the same as to the appointment of guardians. *Credible* witnesses are not *now* necessary; convicted felons or *lunatics*, known to be so, will be sufficient. *Beneficial* gifts by the will to witnesses, except charges of debts, void, and also to the wife or husband of those claiming under such witness; but it was only void under the old law, as to wills containing devises of freehold estates, and it should seem, bequests, *at law*, of stock. Probate, as to wills of personal property, and under the old law, as to appointments, such further solemnities as the power may have prescribed. Military and naval officers of all ranks are included in the description of soldiers, mariners, and seamen.

As to the revocation of wills. By section eighteen, every will shall be revoked by marriage (except a will made in exercise of a power of appointment, when the estate thereby appointed would not, in default of such appointment, pass to the heir, customary heir, executor, or administrator, or the person entitled as next of kin under the Statute of Distributions). Section nineteen enacts, that no will shall be revoked by any presumption of an intention on the ground of an alteration in circumstances. The twentieth

section enacts, that no will, or codicil, or any part thereof, shall be revoked otherwise than as aforesaid, or by another will or codicil executed as aforesaid, or by some writing declaring an intention to revoke the same, and executed like a will, or by burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence, and by his direction, with the intention of revoking the same. By section twenty-one, no obliteration, interlineation or other alteration made in any will after execution, shall be valid or have any effect (*except* so far as the words or the effect of the will before such shall not be apparent), unless such be executed like a will; but the will, with such alteration as part thereof, shall be deemed to be duly executed, if the signature of the testator, and the subscription of the witnesses be made in the margin, or on some other part of the will opposite or near to such alteration, or at the foot, or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will.

There are only four modes now by which wills can be revoked, and in simply stating them, we will glance at the old law respecting it. 1. By marriage in all cases, which, however, does not affect appointments of property, which would not devolve on the testator's representatives in default of appointment. Under the old law, it was marriage of a testatrix, or of a testator, and the birth of a child capable of benefiting by the revocation, arising from implication, and capable of being rebutted by circumstances. As to personalty, by the birth of children by a wife taken before the will made under special circumstances. 2. By express declaration contained in a will or codicil, or revoking instrument executed as a will, *except* wills of personal estate by soldiers and seamen revokable by parol; under the old law, by parol simply as to nuncupative wills, devises of customary and copyhold property, testamentary appointment of guardians; and perhaps, devises of estates *pour autre vie*. As to written wills of personalty by parol committed to writing in the testator's lifetime, and proved by three witnesses to have been read to and allowed by him. As to freehold property, by a will or codicil, executed according to the Statute of Frauds, or by a revoking instrument signed by the testator in the presence of three witnesses. 3. By destruction, cancellation, &c. By an unattested burning, tearing, or other destroying of the substance of the will, with intention to revoke, and by an attested obliteration, interlineation, or alteration of the *writing*. Under the old law, by an unattested destruction or cancellation of the will itself, or of the writing, or part of it, with intention to revoke; but dependent on the validity of any substituted gifts, which, as to freeholds, &c., must be attested. 4. By alterations in, or attempted dealings with, the property. The twenty-third section en-

acts, that no conveyance or other act, made or done subsequently to the execution of a will, of or relating to any real or personal estate therein comprised, except an act by which such will shall be revoked as aforesaid, shall prevent the operation of the will with respect to such estate as the testator shall have power to dispose of by will at the time of his death. The revocation extends only to an actual alienation, at law of the legal, in equity of the equitable, ownership subsisting at the testator's death. According to the old law, it could be brought about by interruption or destruction of the original seisin, except a disseisin by fraud, or to which the testator is remitted. Except, also, at law a partition, and in equity a mortgage. By modification of the equitable ownership. By an attempt to dispose differently of the property, failing from any other cause than fraud, or the disability of the testator.

As to republication and revival. The twenty-second section enacts, that no will or codicil, or any part thereof, in any manner revoked, shall be revived, otherwise than by the re-execution thereof, or by a codicil duly executed, and shewing an intention to revive the same, and when any will or codicil partly revoked, and afterwards wholly revoked shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shewn. Now this took place under the previous order of things:—by parol as to personal and copyhold property. Republication, but not revival, by surrender to the use of the will as to copyholds. By re-execution, with the formalities appropriate to the nature of the property. By codicil to the will; but not so as to pass after-acquired lands, if the codicil in terms restrict the operation of the will to the lands originally devised, and by revival, but not republication, by cancellation of the revoking instrument.

As to the time from which the will speaks and takes effect. The twenty-fourth section enacts, that every will shall be construed, with reference to the real and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention appear by the will. Now as to the *persons* to whom the property is given, the old rules of construction remain unaltered, and they are these:—as to persons described in the will by name, or otherwise individually from the *date* of the will: and as to persons described as a class, from the testator's death, unless a contrary intention appear. But as to illegitimate children from the date of the will. The operation of the clause then is restricted to the *property*, which is from testator's death, unless a contrary intention appear. Now under the old regulations, it is, as to personal property, from the date of the death, except where gifts are held to be specific; and as to freehold and copyhold property, from the date of the will.

As to lapse and failure of gifts. The twenty-fifth section enacts, that, unless a contrary intention shall appear by the will, devises contained in wills, which shall fail or be void by reason of the death of the devisee in the lifetime of the testator, or by reason of such devise being contrary to law, or otherwise incapable of taking effect, shall be included in the residuary devise (if any) contained in such will. A declaration in the will, as to the destination of lapsed and void gifts, will, of course, exclude the operation of this section.

By the thirty-second section it is enacted, that where any person to whom any real estate shall be devised, for an estate tail, or an estate in *quasi* entail, shall die in the lifetime of the testator, leaving issue who would be inheritable under such entail, and any such issue shall be living at the time of the death of the testator, such devise shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will. And by the thirty-third section it is enacted, that where any person being a child or other issue of the testator, to whom any real or personal estate shall be devised or bequeathed, for any estate or interest not determinable at or before the death of such person, shall die in the lifetime of the testator leaving issue, and any such issue of such person shall be living at the time of the death of the testator, such devise or bequest shall not lapse, after the death of the testator, unless a contrary intention shall appear by the will. This clause applies to the lapse of gifts to children or other issue of the testator *only*; as to strangers, lapse will deprive their issue of all benefit from the gift as heretofore.

But to our summary. As a general rule, gifts to persons, fail by their death in the testator's lifetime, notwithstanding a declaration that they shall not lapse, with these exceptions, in the case of gifts in joint-tenancy to several, of whom one, at least, survives the testator, and this rule obtained before the 1st January, 1838. The further exceptions under this act are, in the case of a gift to a person in tail, or *quasi* in tail, who leaves issue in tail surviving the testator, and also a gift of an absolute or transmissible interest to a child or other issue of the testator, who leaves issue surviving the testator. The question then occurs, for whose benefit do these gifts lapse? If it be a share in the residue, for the benefit of the real or personal representatives of the testator, according to the nature of the property. If of a specific gift, for the benefit of the residuary devisee or legatee; under the old law, it was this: if a specific gift of freehold or copyhold, for the benefit of the heir, but of a mere *charge* on the land, for the benefit of the residuary or specific devisee of that land; if of a specific gift of personalty, for the benefit of the residuary legatee.

As to the construction of a general devise

of lands, the twenty-sixth section enacts, that a devise of the land of the testator, or of the land of the testator in any place, or in the occupation of any person mentioned in his will, or otherwise described in a general manner, and any other general devise which would describe a customary, copyhold, or leasehold estate, if the testator had no freehold estate which could be described by it, should be construed to include the customary copyhold and leasehold estates of the testator, or his customary copyhold or leasehold estates, or any of them, to which such description shall extend, as the case may be, as well as freehold estates, unless a contrary intention appear. Under the old law, the construction was this, it included freeholds and copyholds: if no copyholds nor freeholds to satisfy the devise, then leaseholds.

As to the expressions necessary to execute a general power, the twenty-seventh section enacts, that a devise or bequest in general terms, of real or personal property, shall be construed to include any property, coming within the description, which the testator may have power to appoint in any manner he may think proper, unless a contrary intention shall appear. Under the old law, it was any gift to be construed as necessarily referring either to the power, or the specific property which is the subject of it.

As to the devise of a fee, the twenty-eighth section enacts, that where any real estate shall be devised to any person without any words of limitation, such devise shall be construed to pass the fee simple, or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a contrary intention appear, but under the old law, only a life estate passed, unless words were used to shew an intention to pass the fee.

The absolute interest in personalty, including leaseholds, passes under both laws.

The twenty-ninth section enacts, that in any devise or bequest of real or personal estate, the words "die without issue," or "die without leaving issue," or "have no issue," or any other words importing either a want or failure of issue of any person in his lifetime or at the time of his death or an indefinite failure of his issue, shall be construed to mean on a want or failure of issue in the lifetime or at the time of the death of such person, and not an indefinite failure of his issue, unless a contrary intention shall appear by the will, by reason of such person having a prior estate tail, or of a preceding gift, being, without any implication arising from such words, a limitation of an estate tail to such person, or issue, or otherwise: provided, that this act shall not extend to cases where such words as aforesaid import, if no issue described in a preceding gift shall be born, or if there shall be no issue who shall live to attain the age, or otherwise answer the description required for obtaining a vested estate, by a preceding gift to such issue. The construction of which is simply this,

that such words mean a failure of issue *at the death* of the ancestor named, unless a contrary intention appear; whereas, under the old law, they meant an *indefinite* failure of issue, unless expressions or circumstances indicated a contrary intention.

Now as to the estate of trustees under a general devise, the thirtieth section enacts, that where any real estate (other than or not being a presentation to a church) shall be devised to any trustee or executor, such devise shall be construed to pass the fee-simple or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a definite term of years, absolute or determinable, or an estate of freehold, shall thereby be given to him expressly or by implication.

And the language of the thirty-first section is this:—that where any real estate shall be devised to a trustee, without any express limitation of the estate to be taken by such trustee, and the beneficial interest in such real estate, or in the surplus rents and profits thereof, shall not be given to any person for life, or such beneficial interest shall be given to any person for life, but the purposes of the trust may continue beyond the life of such person, such devise shall be construed to vest in such trustee, the fee-simple, or other the whole legal estate which the testator had power to dispose of by will in such real estate, and not an estate determinable when the purposes of the trust shall be satisfied.

It will have been remarked how very nearly the conditions or postulates necessary to bring these clauses into operation are identical. They differ but in these four respects. The first clause embraces all real estates, *except* presentations, the second contains no such exception. The first extends to devises to executors, the second does not, though this is a nominal difference. The first permits *implied* limitations to prevent its operation, the second does not. The second does not apply where the beneficial interest is given to a person for life, and the trustee has no duty which may outlive the life of that person; the first does apply to such a case, being irrespective of all trusts, *except* such as may raise an implication of estate against it. But what do they effect when in action? They give the fee to the trustee, while, under the old state of things, such an estate passes as is commensurate with the trusts.

As to what wills and estates *pour autre vie* are within this act, the thirty-fourth section enacts, that this act shall not extend to any will made *before* 1st January, 1838, and that every will re-executed or republished, or revived by any codicil, shall for the purposes of this act, be deemed to have been made at the time at which the same shall be so re-executed, republished, or revived; and that this act shall not extend to any estate *pur autre vie* of any person who shall die *before* 1st January, 1838.

The thirty-fifth section enacts, that this act shall not extend to Scotland, and the thirty-sixth and *last* section, that the act might have been amended, altered, or repealed in the then session of Parliament; but it has not been altered since it passed into a law.

WILL, estate at. It originates in mutual agreement and is not bounded by any definite limit of time, but depends upon the concurrence of both parties, being at the reciprocal will of both. It is the lowest estate which can arise by agreement between parties. The agreement may be either verbal or in writing, and must be followed by the entry of the grantee upon the land, but in many cases it arises by legal construction, as in the following instances:—If a tenant for years hold over the term, and continues to pay rent, the acceptance of rent makes his interest an estate at will. If a person make a feoffment and deliver the deed, without giving livery of seisin, and the feoffee enters, he is tenant at will. If a person enter upon lands under a void lease, paying rent, he is but a tenant at will. So also, if a person enter under an agreement for a lease, or under a contract to purchase the estate, with the vendor's consent. If a mortgagor continue in possession of the lands mortgaged after default in repayment of the money, and there is no clause in the mortgage deed that the mortgagor should hold until default, he is tenant at will.

Either party may determine the estate. The lessor can do so by an express declaration that the lessee shall hold no longer, which should either be made on the land or notice of it served upon the lessee. But if he exercise any right of ownership, unless it be with the lessee's consent, inconsistent with the enjoyment of the estate, it will put an end to it, as entering upon the land, cutting down trees demised, making a feoffment or lease for years to commence immediately. If the lessee commit an act of desertion or do anything inconsistent with his estate, as assigning it to another person or committing waste, but a verbal declaration that he will hold the lands no longer does not determine his estate, unless he waive, at the same time, the possession. Neither party can determine this estate at a time when it would be beneficial to the other; and six months notice must be given before bringing an action of ejectment. The tenant at will is entitled to emblements when his estate is determined by the lessor or the act of God.

The courts of law have lately been very reluctant to construe demises, where no certain term is mentioned, to be estates at will, but rather deem them to be tenancies from year to year. *Watk. Conv.* 1.

WINCHESTER, the standard measure; which was originally kept at Winchester.

WINDAS or **WINDLASS**, wanlass: which see.

WINDOW TAX, a tax on windows, where a house contains more than six, and is worth more than five pounds per annum.

WINE, *adulteration of*, an offence against public health, and punished with the forfeiture of 100*l.* if done by the wholesale merchant, and 40*l.* if done by the vintner or retail trader. 11 *Car. II.*, c. 25, § 11; 1 *W. & M.*, st. 1, c. 39, § 20.

WINTER HEYNING, the season between 11th November and 23rd April, which is excepted from the liberty of commoning in certain forests. 23 *Car. II.*, c. 3.

WISTA, half a hide of land or sixty acres.

WITAM, the purgation from an offence by the oath of the requisite number of witnesses.

WITCHCRAFT, conjuration.

No prosecution shall for the future be carried on against any person for witchcraft, sorcery, enchantment, or conjuration, or for charging another with any such offence; but all persons pretending to use the same shall be punishable by imprisonment. 9 *Geo. II.*, c. 5; 5 *Geo. IV.*, c. 85, § 4.

WITE [Sax.], a punishment, pain, penalty, mulct.

WITEKDEN, a taxation of the West Saxons, imposed by the public council of the kingdom.

WITENA or **WITTENA-GEMOTE** [*conventus sapientium*], a convention or assembly of great men to advise and assist the Sovereign, answerable to our parliament in the time of the Saxons. See **PARLIAMENT**.

WITENS, the chief of the Saxon lords or thanes, their nobles and wise men.

WITHERNAM [*wieder*, Sax., other, and *naam*, a taking], reprisals. See **LETTERS OF MARQUE**; **REPLEVIN**.

WITHERSAKE, an apostate, or perfidious renegade.

WITHOUT IMPEACHMENT OF WASTE.

See **ABSQUE IMPETITIONE VASTI**.

WITNESS, one who gives evidence in a cause. See **EVIDENCE**.

WITTENA-GEMOT. See **WITENA**.

WOLD [Sax.], a down, or open country.

WOLFESHEAD or **WOLFERHEFOD** [Sax.], the condition of such as were outlawed in the time of the Saxons, who, if they could not be taken alive to be brought to justice, might be slain, and their heads brought to the King; for they were no more accounted of than a wolf's head. *Bract.* 1. 3.

WONG [Sax.], a field. *Spelm.*

WOOD-CORN, a certain quantity of grain paid by the tenants of some manors to the lord for the liberty to pick up dried or broken wood.

WOOD-GELD, the cutting of wood within the forest, or rather the money paid for the same.

WOODMOTE, the forty days court: which see.

WOOD-PLEA-COURT, a court held twice in the year in the forest of Clun in Shropshire, for determining all matters of wood and agistments.

WOODWARDS, officers of the forest, whose duty consists in looking after the wood and vert and venison, and preventing offences relating to the same. *Manw.* 189.

WOOLSACK, the seat of the Lord Chancellor in the House of Lords.

WORDS. See **DEFAMATION**.

WORKHOUSES, municipal institutions for the support and maintenance of paupers. See **POOR LAWS**.

WORT or **WORTH** [*weorth*, Sax.], a curtilage or country farm.

WORTHINE OF LAND, a certain quantity of ground so called in the manor of Kingsland in Hereford; the tenants are called *worthies*.

WOUND, any lesion of the body, whether cuts, bruises, contusions, fractures, dislocations, or burns. In surgery, it is confined to a solution of continuity.

The judicial questions which arise in cases of wounds, are: how far has the person who caused the injury contributed to the death of the deceased, or to the lesion of one or other of the functions of the body? And to what is a certain wound to be referred?

Wounds, from their nature, may be either slight, dangerous, or mortal. A slight wound is where there are no parts injured that are important in carrying on life, or any of its functions, and which heals quickly, leaving no lesion or deformity. A dangerous wound is not mortal, though not exempt from danger presenting difficulties in its cure. A mortal wound produces death.

Marc divides wounds into mortal and not mortal: the first is subdivided into wounds of necessity mortal, and wounds mortal by accident; the second into wounds completely and incompletely curable.

Dr. Biessy classifies them into slight and severe wounds, and divides the latter into those which may be perfectly cured, those which may be cured but leave some deformity or weakness, and those which may prove fatal.

Circumstances as well as accident have a considerable effect on wounds:—

1. The constitution and age of the patient, and his antecedent as well as co-existent maladies may exercise a baleful influence on the injury received.

2. The passions of the patient, and his negligence or delay, or that of his attendants, may render slight wounds dangerous, or dangerous wounds mortal.

3. Insalubrity of the atmosphere, whether it be of a local nature, or the general constitution.

4. The ignorance or negligence of the surgeon may aggravate or endanger the condition of a wounded patient. *Beck's Med. Jurisp.*, c. xv. See **MAYHEM**.

Wreccum maris significat illa bona quæ naufragio ad terram pelluntur.—(A wreck of the sea signifies those goods which are driven to shore by a shipwreck.)

WRECK, such goods as after a shipwreck are cast upon the land by the sea, and left there within some county, for they are not wrecks so long as they remain at sea in the juris-

diction of the admiralty. 2 *Inst.* 167. If any live thing escape, or if proof can be made of the property of any of the goods of lading which come to shore, they shall not be forfeited to the Crown as wreck. The sheriff of the county is bound to keep the goods a year and a day, that if any man can prove a property in them, either in his own right or by right of representation, they shall be restored to him without delay; but if no such property be proved within that time, they shall then go to the Crown. If the goods be of a perishable nature, the sheriff may sell them, and the money shall be liable in their stead. *Stat. West.* 1, 3 *Edw. I.*, c. 4.

This revenue of wrecks is frequently granted to lords of manors as a royal franchise.

Plundering wrecks is felony punishable with transportation or imprisonment. 7 *Wm. IV.*, and 1 *Vict.*, c. 84.

WRECK-FREE, exemption from the forfeiture of ship-wrecked goods and vessels, which the Cinque Ports enjoy by a charter of Edward I.

WRIT [*breve*, Lat.], a judicial process, by which any one is summoned as an offender; a legal instrument to enforce obedience to the orders and sentences of the courts. For the particular writs see their distinctive names, as assistance, error, &c.

The 3 & 4 *Wm. IV.*, c. 27, abolished a great number of writs. It enacted (§ 36), that “no writ of right patent, writ of right *quia dominus remisit curiam*, writ of right in capite, writ of right in London, writ of right close, writ of right *de rationabili parte*, writ of right of advowson, writ of right upon disclaimer, writ *de rationabilibus divisiois*, writ of right of ward, writ *de consuetudinibus et servitiis*, writ of *cessavit*, writ of escheat, writ of *quo jure*, writ of *secta de molendinum*, writ *de essendo quietum de theolonio*, writ of *ne injuste vexes*, writ of *mesne*, writ of *quod permittat*, writ of *formedon in descender*, in remainder, or in reverter, writ of assize of *novel disseisin*, nuisance, *darrein presentment*, *juris utrum* or *mort d'ancestor*, writ of entry *sur disseisin* in the *quibus*, in the *per*, in the *per* and *cui*, or in the *post*, writ of entry *sur intrusion*, writ of entry *sur alienation*, *dum fuit non compos mentis*, *dum fuit infra ætatem*, *dum fuit in prisonâ*, *ad communem legem*, in *casu proviso*, in *consimili casu*, *cui in vitâ*, *sur cui in vitâ*, *cui ante divortium*, or *sur cui ante divortium*, writ of entry *sur abatement*, writ of entry *quare ejecit infra terminum*, or *ad terminum qui præterit*, or *causâ matrimonii prælocuti*, writ of *aiel*, *besaiel*, *tresaiel*, *cosinage*, or *nuper obiit*, writ of waste, writ of partition, writ of *disceit*, writ of *quod ei de forceat*, writ of covenant real, writ of *warrantia chartæ*, writ of *curia claudenda*, or writ *per quæ servitia*, and no other action real or mixed (except a writ of right of dower, or writ of dower *unde nihil habet*, or a *quare impedit*, or an ejectment), and no plaint in the nature of any such writ or action, except

a plaint for freebench or dower, shall be brought after the 31st day of December, 1834."

WRITER TO THE SIGNET, also called *clerk to the signet*, a Scottish attorney at law, who is chiefly employed in civil trials before the Court of Session, he likewise prepares the warrants of all charters of lands flowing from the Crown; all summonses for citing parties to appear in the Court of Session, all diligences for affecting the person or estate of a debtor, or for compelling implement of the decrees of the Supreme Court.

WRITER OF THE TALLIES, an officer of the exchequer, who acts as clerk to the auditor of the receipt, who writes upon the tallies the tellers' bills.

WRITINGS OBLIGATORY, bonds. See **BOND**.

WRONG, the privation of right, an injury, a designed or known detriment.

WRONGOUS IMPRISONMENT, false imprisonment. *Scotch Phrase*.

WYTE. See **WITE**.

X

XANTHUS, for *sanctus*, sacred. *Spelm.*

XENODOCHIUM, an inn, a hospital.

XENODOCHY [*ξενοδοχία*, Gk.], reception of strangers; hospitality. *Encyc. Lond.*

XYLON, a punishment among the Greeks, answering to our stocks.

Y

YARD [*geard*, Sax.], an enclosed space of ground, generally attached to a dwelling house, &c.; also, a measure three feet in length.

YARLAND [*virgata terræ*], a quantity of land differing in extent in different parts of the country. *Cowell*.

YEAR [*gear*, Sax.], the period in which the revolution of the earth round the sun, and the accompanying changes in the order of nature, are completed. See **CALNDAR**.

YEAR-BOOKS, reports, in a regular series, from King Edward II. to Henry VIII., which were taken by the prothonotaries or chief scribes of the court, at the expense of the Crown, and published annually, hence their denomination.

YEAR AND DAY [*annus et dies*], a time that determines a right or works a prescription in many cases.

YEAR, DAY, AND WASTE, [*annus, dies, et vastum*], a part of the royal prerogative, formerly, whereby the Crown had the profits of lands and tenements for a year and a day, of those that were attainted of petit treason

or felony, whosoever was lord of the manor whereto the lands or tenements belonged; and the Sovereign may cause waste to be made on the tenements, by destroying the houses, ploughing up the meadows and pastures, rooting up the woods, &c. (except the lord of the fee agreed for the redemption of such waste), afterwards restoring them to the lord of the fee. *Stamd. Prærog.* 44.

This prerogative is abolished by the 54 Geo. III., c. 145. See **ESCHEAT**.

YEAR TO YEAR, *tenancy from*.

Some lawyers have asserted that there cannot be a tenancy at will in the present day; but if two parties agree, that one should let and the other should hold, so long as both parties please, that would certainly be a holding at will, and there is nothing to prevent parties from entering into such an agreement. The presumption in favour of tenancies from year to year is in furtherance of justice. All leases for uncertain terms are *prima facie* leases at will, it is the reservation of an annual rent that turns them into leases from year to year, and, therefore, the courts have held that where there is a general letting at a yearly rent, though payable half yearly or quarterly, and nothing be said about the duration of the term, it is an implied letting from year to year. If this construction would be productive of wrong, it would not take place, in accordance with the maxim *constructio legis non facit injuriam*. For instance, if a lease from year to year would work a forfeiture, there would be no reason for construing such a demise a lease for a year rather than an estate at will.

Tenancies from year to year do not determine upon the death of the tenant, as estates at will do, but devolve upon the executor or administrator. In order to put an end to this estate, a half year's notice to quit, ending with the current year of the tenancy, must be given, and it should be in writing, in order to render it more easy of proof. *Watk. Conv.* 28.

YEARS, *estate for*. See **TERMS FOR YEARS**.

YEOMAN, **YEMAN**, or **YOMAN** [*guma*, Sax., *gomman*, Theotisc.], a man of a small estate in land; a farmer, a gentleman farmer; also, a freeholder not advanced to the rank of a gentleman; the highest order among the plebeians.

YEME [*hieme*], winter. *Cowell*.

YEOMANRY, the collected body of yeomen.

YEOMANRY CAVALRY, a denomination given to those troops of horse which were levied in the late war among the gentlemen and yeomen of the country, upon the same principle as the volunteer companies.

YEOMEN OF THE GUARD, properly called yeomen of the guard of the King's body, a body of men of the best rank under the gentry, and of larger stature than ordinary, every one being required to be six feet high. *Encyc. Lond.*

YEONOMUS [*œconomus*], an advocate, patron, or defender.

YEVEN or **YEOVEN**, given; dated. *Cowell.*

YOKELET [*joclet*, Sax.], a little farm, requiring but a yoke of oxen to till it.

YULE [*jul*, Su. Goth., *jule*, Dan., *jol*, Scel., *gehul*, *geola*, *geol*, Sax.], the times of Christmas and Lammas. *Obsolete.*

Z

ZETETICK [*ζήτησις*, Gk.], proceeding by enquiry. *Encyc. Lond.*

ZYGOSTATES [*liprimens*], the clerk of a market, who examines the weights and measures. *Spelm.*

THE END.

